

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P.No.22151 of 2018

1. Bangalore mani @ Tamilselvan
  2. Ponnusami
  3. Kumar @ Muthuraman
  4. Singam @ Meesaikaran
  5. Thangamani
- ... Petitioners

Vs

State Rep. by  
Inspector of Police,  
Thalavadi Police Station,  
Erode District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order passed by the learned Judicial Magistrate, Sathiyamangalam in C.M.P.No.4904/2016 in C.C.No.167/2007 dated 19.06.2017 and further direct the learned Judicial Magistrate, Sathiyamangalam to permit the petitioners to cross examine the witnesses P.W.2, P.W.3, P.W.4, P.W.6 and P.W.7.

For Petitioners : Mr.S.Parthasarathy

For Respondent : Mrs.M.Prabhavathi  
Addl.Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to set aside the order passed by the Judicial Magistrate, Sathiyamangalam, in C.M.P.No.4904 of 2016 in C.C.No.167 of 2007 dated 19.06.2017 and further direct the Judicial Magistrate, Sathiyamangalam, to permit the petitioners to cross examine the witnesses P.W.2, P.W.3, P.W.4, P.W.6 and P.W.7.

2.The petitioners are facing prosecution in C.C.No.167 of 2007 before the Judicial Magistrate Court, Sathiyamangalam, for the offences under Sections 147, 148, 447, 323, 324 and 506(ii)

IPC read with Section 149 IPC. The prosecution examined their witnesses and they were not cross examined by the accused, for the reasons best known to the accused. Thereafter, the accused filed C.M.P.No.4904 of 2016 in C.C.No.167 of 2007 under Section 311 Cr.P.C., to recall P.W.2, P.W.3, P.W.4, P.W.6 and P.W.7, which has been dismissed by the trial Court by the impugned order dated 19.06.2017, challenging which, the accused are before this Court.

3.Heard Mr.S.Parthasarathy, learned counsel for the petitioners and Mrs.M.Prabhavathi, learned Additional Public Prosecutor, appearing for the respondent police.

4.On a perusal of the records, it is seen that P.W.2 and P.W.3 were examined on 22.08.2008; P.W.4 was examined on 18.09.2008; P.W.6 was examined on 29.11.2011 and P.W.7 was examined on 10.01.2012. The reason given in the application under Section 311 Cr.P.C. is that, on all these dates, the counsel on record had gone to the Sessions Court. However, Proviso (b) under Section 309 of Cr.P.C. reads as follows:

"(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

5.It is seen that the said application under Section 311 Cr.P.C. itself has been filed only in the year 2016, whereas, the witnesses have been examined in the years 2008, 2011 and 2012. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288], the Hon'ble Supreme Court has clearly held that the accused shall cross examine the witnesses on the same day they are examined in chief. In State (NCT of Delhi) vs. Shiv Kumar Yadav [(2016) 2 SCC 402 : 2015 (9) Scale 649], the Hon'ble Supreme Court has laid down the law relating to Section 311 Cr.P.C. On the mere asking of the accused, the power under Section 311 Cr.P.C. cannot be invoked. Hence, this Court does not find any infirmity in the order passed by the trial Court, warranting interference.

In the result, this Criminal Original Petition is dismissed as being devoid of merits.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

mkn/krk

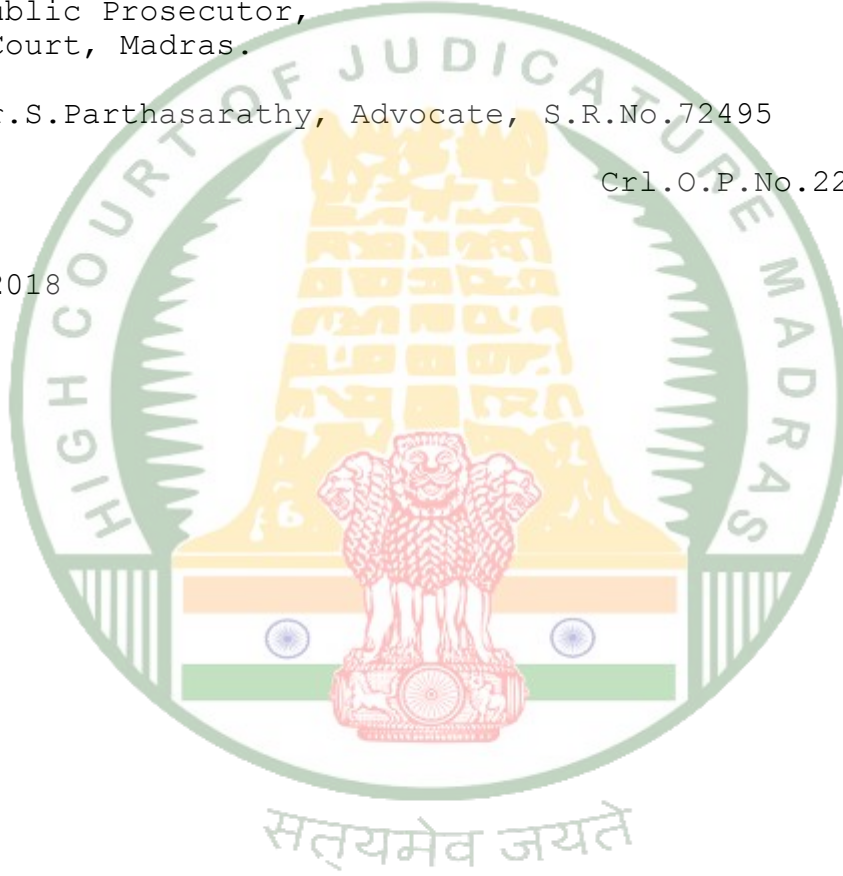
To

1. The Inspector of Police,  
Thalavadi Police Station,  
Erode District.
2. The Judicial Magistrate,  
Sathiyamangalam.
3. Do Thro The Chief Judicial Magistrate,  
Erode.
4. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.72495

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EV(Co)  
CS/12/11/2018



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