

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 08.03.2018)

(Pronounced on : 11.06.2018)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.2949 of 2011

and

M.P.No.1 of 2011

S.Syedibrahim ... Petitioner/Accused

.. Vs ..

State rep by the
Inspector of Police,
B1, North Beach Police Station,
Chennai
[Cr.No.526 of 2006] ...Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in the impugned order dated 16.12.2010 allowing the memo dated 01.12.2010 of the prosecution by altering a charge in S.C.No.456 of 2007 on the file of the VII Additional Sessions Judge at Chennai and set aside the impugned order to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.T.Shunmuga Rajeswaran
Govt.Advocate (Crl.side)

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to call for the records in the impugned order dated 16.12.2010 allowing the memo dated 01.12.2010 of the prosecution by altering a charge in S.C.No.456 of 2007 on the file of the VII Additional Sessions Judge at Chennai and set aside the impugned order.

2. It is the case of the petitioner that the impugned order is contrary to law, facts of the case and probability of the evidence before the Court. The trial Court overlooked the stage of the case that the accused was arrested on 11.09.2006 for the alleged occurrence said to have taken place on 09.09.2006. The investigation was completed during 2006 and the final report was laid and in the committal order, it was mentioned that the

alleged occurrence said to have taken place at 09.00 a.m on 09.09.2006 and the charge was framed during 2007 and the trial proceeded and all the prosecution witnesses were examined and the defence witnesses were also examined and written arguments were also placed before the Court. The learned trial Judge, without appreciating the charge framed and the time mentioned thereon, directed the prosecution to file a memo and the memo dated 01.12.2010 did not contain any details and hence no effective objections could be placed before the Court. However, the learned trial Judge assumed the role of a prosecutor and upset the defence case by altering the charge that the alleged offence said to have taken place on 09.09.2006 prior to 05.00p.m instead of 09.00a.m being the original charge framed by the Court. The said lapse of timing goes to the root of the case and only after pointing out the lapse by the defence during the course of oral and written arguments, the trial Judge altered the charge and the said procedure had caused grave prejudice to the defence. The trial Court rendered a perverse opinion that the occurrence had taken place on 09.09.2006 prior to 05.30p.m.

3. The learned Public Prosecutor has submitted that both in the final report as well as in the statement of witnesses, it could be seen that the prosecution witnesses have stated correctly about the time of the occurrence. However, it is only in the charge framed by the Court that the time was wrongly typed as 09.00 a.m instead of prior to 5.30 a.m while, the date is the same and hence, he seeks for rejection of the petition.

4. Heard both and perused the lower Court records.

5. Based upon the final report filed by the Investigation Officer, the case was taken on record and S.C.No.460 of 2007 and charges are framed and trial has commenced and recording of the evidence of the prosecution witnesses is over. After completion of the prosecution witnesses, it appears that the Public Prosecutor before the Sessions Court has filed a memo stating that in the charge framed by the Court, the time of occurrence is mistakenly mentioned instead of prior to 5.30 am. on 09.09.2006 and with regard to the date, there is no dispute.

6. The learned counsel for the petitioner has submitted that after examination of the prosecution witnesses, alteration of the charge does not warrant and the same is against the established principles of Criminal Rules of Practice. After going through the records and also order passed by the trial Court, it is seen that in the final report and also the statement of witnesses who have spoken to in the Court witness box, have categorically stated about the time of occurrence.

7. On perusal of the records, it is seen that all the prosecution witnesses have spoken about the occurrence which was alleged to have taken place on 09.09.2010 prior to the 5.20 p.m. and not 9.00 a.m. The trial Court after observing the above and

also the examination the exhibits filed before the Court, came to the conclusion that both the statement of prosecution witnesses and exhibits are uniformly pointing out the time of occurrence only as prior to 5.30 p.m and the trial Court has also taken into consideration the suggestion case put forward by the defence side with regard to the time and the date and the trial Court also came to the conclusion that nowhere during the cross examination of the private prosecution witnesses, none of the private prosecution witnesses have controverted the defence side about the occurrence time and based upon the above factual position and based upon the statement of the prosecution witnesses and the trial Court has come to the conclusion that the time of occurrence is mentioned as 9.00a.m in the charge framed in the Court, which is mistakenly mentioned and accordingly, allowed the memo filed by the Public Prosecutor.

8. On perusing the statement of witness and final report by the State the time of occurrence is clearly mentioned as prior to 5.30 p.m but only for the charge framed by the Court it is, mistakenly typed as 9.00 a.m.

9. After going through the records and also finding of the trial Court as discussed above, I find any illegality in the allowing the memo. Furthermore, under Section 216 of Cr.P.C, the Court is empowered to alter the charges at any stage before pronouncement of the judgment. However, before doing so, an opportunity of being heard has to be given to the accused and in this case, due opportunity has been given to the petitioner and hence, I do not find any illegality or irregularity in allowing the memo and this Court finds that the order of the trial Court does not suffer from any illegality or irregularity warranting interference and accordingly, the same does not warrant any interference by this Court and accordingly, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The VII Additional Sessions Judge at Chennai
(Note: The Registry is directed to return the original records to the trial Court within a period of two weeks from the date of receipt of a copy of this order)

2.Inspector of Police,
B1, North Beach Police Station,
Chennai

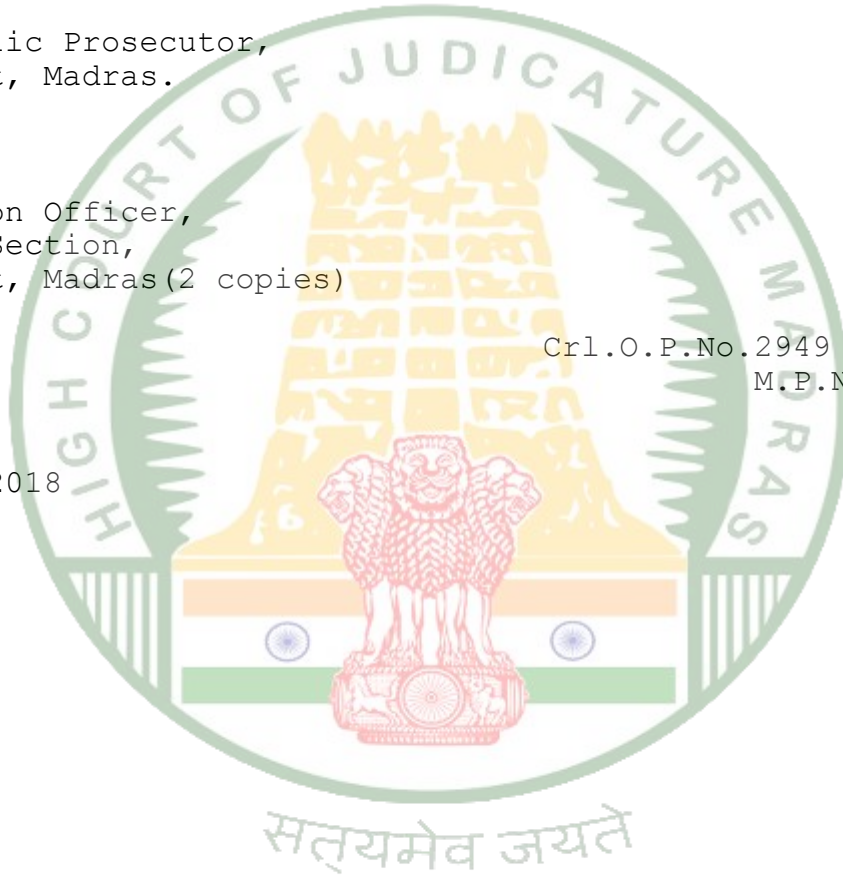
3.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras(2 copies)

Crl.O.P.No.2949 of 2011 and
M.P.No.1 of 2011

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nr 19/06/2018



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