

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.04.2018

CORAM

THE HON'BLE MR.JUSTICE P. N. PRAKASH

Crl.O.P.No.12531 of 2018

and

Crl.M.P.No.6720 of 2018

1. Chandrasekar @ Vasudevan
2. Thamash Arun Prakash
3. Prabhu
- 4.Arun

.. Petitioners /Petitioners/Accused

.Vs.

The Inspector of Police,
Palladam Police Station,
Tiruppur.

..Respondent /Respondent/Complainant

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C seeking a direction to call for the records in CMP No.16 of 2018 in S.C.No.148 of 2013 order dated 12.02.2018 on the file of the Chief Judicial Magistrate, Tiruppur and set aside the same.

For Petitioners : Mr.J.Milton Arul Rajendran

For Respondent : Mr.C.Raghavan

Government Pleader (Crl.Side)

O R D E R

This Criminal Original petition has been filed seeking to call for the records in CMP No.16 of 2018 in S.C.No.148 of 2013 dated 12.02.2018 on the file of the Chief Judicial Magistrate Court, Tiruppur and set aside the same.

2. The petitioner is facing trial in S.C.No.148 of 2013 before the Chief Judicial Magistrate, Tiruppur for the offences under Sections 120-B, 394 r/w 397 IPC, 394 r/w 397/109 IPC. It appears that the Test Identification Parade was conducted by Mr.R.Rajavelu, Judicial Magistrate during investigation. However, the name of the Judicial Officer was not included in the memo of witnessses, but, a copy of the Test Identification Parade report was made part of Section 207 of Cr.P.C papers. In such circumstances, the prosecution filed an application under Section 311 Cr.P.C., to examine the Judicial Magistrate as a prosecution witness, which was allowed by the trial Court. A

date was fixed for the examination of the Judicial Magistrate as a witness and he was also examined on 03.01.2018 as PW12. The Test Identification Parade report was marked as Ex.P.21. On the same day, he was cross-examined at length by the accused. Similarly, Mr.Sundarapandiyan (P.W.10), the Inspector of Police, who was examined in chief on 10.08.2017 was also cross-examined at length. Thereafter, the accused has filed C.M.P.No.16 of 2018 in S.C.No. 148 of 2013 to recall PW10 and PW12, which has been dismissed by the trial Court on 12.02.2018, challenging which, the accused is before this Court.

3. Heard Mr.J.Milton Arul Rajendran, learned counsel for the accused, who submitted that the accused were not able to properly cross-examine the Magistrate, since his name was not included in the memo of witnesses in the charge sheet. He also submitted that further cross-examination of Mr.Sundarapandiyan (P.W.10) is also essential.

4. On a perusal of the impugned order, it is seen that the Magistrate was summoned to give evidence pursuant to the order passed by the trial Court in C.M.P.No.879 of 2017 on 11.12.2017. In other words, the recall order was passed on 11.12.2017, but, the Judicial Magistrate was examined on 03.01.2018, which is more than 20 days later. Therefore, it cannot be stated that the Judicial Magistrate was summoned on a particular day, without notice to the accused, the petition under Section 311 Cr.P.C. was filed simultaneously and the Judicial Magistrate was examined. That apart, in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C., by the trial Court. The Test Identification Parade report is only a corroborative evidence and not a substantive piece of evidence.

5. In such view of the matter, this Court does not find any infirmity in the order passed by the trial Court warranting interference. Accordingly, this petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS III)

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Sub Assistant Registrar

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To

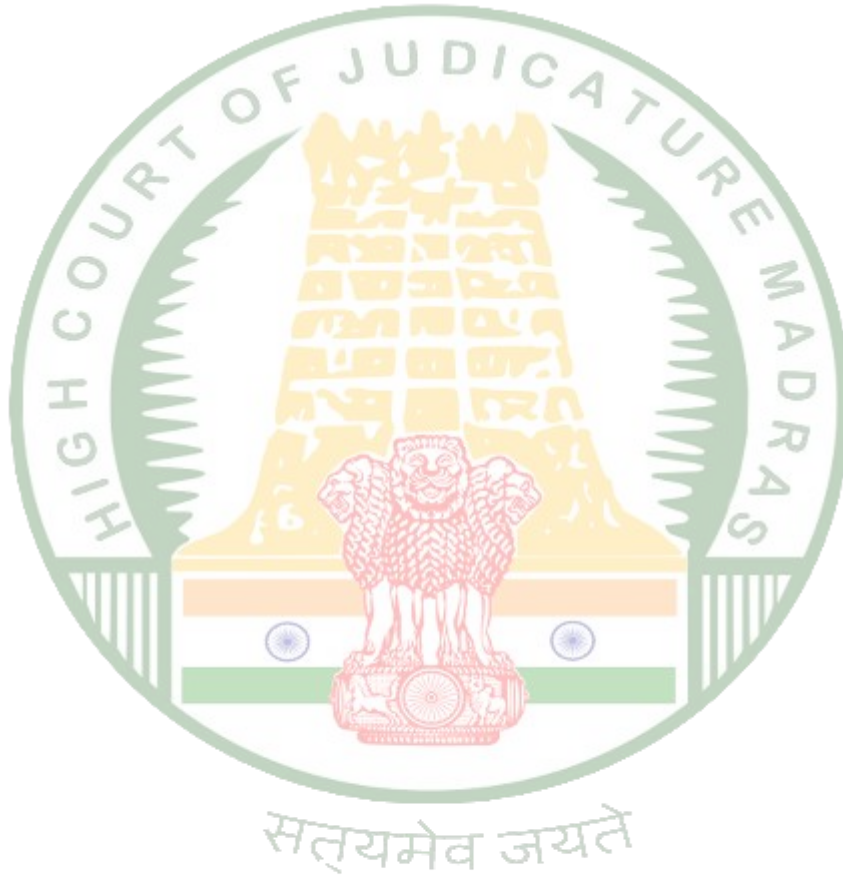
1.The Chief Judicial Magistrate,
Tiruppur.

2.The Inspector of Police,
Palladam Police Station,
Tiruppur.

3.The Public Prosecutor
High Court, Madras.

Crl.O.P.No.12531 of 2018

MR (CO)
GN (04/05/2018)



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