

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 14.11.2018

CORAM  
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Revision Case Nos.1141 & 1142 of 2014 and  
M.P.Nos.1 of 2014 in  
Criminal Revision Case Nos.1141 & 1142 of 2014

Mr.Palaniappan ... Petitioner in Crl.R.C.No.1141/2014  
Mr.Rayar ... Petitioner in Crl.R.C.No.1142/2014

Vs

The State  
Rep. By the Inspector of Police,  
Taluk Police Station,  
Villupuram. (Criminal 178/2003)  
(Criminal 179/2003)

..Respondent in both Crl.R.Cs

Prayer in Crl.R.C.No.1141 of 2014:- This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., against the order of the learned Additional District and Sessions Judge No.1, Tindivanam (Villupuram Sessions Division), in Crl.M.P.No.409/2014 in Sessions Case No.94/2005 dated 27.10.2014.

Prayer in Crl.R.C.No.1142 of 2014:- This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., against the order of the learned Additional District and Sessions Judge No.1, Tindivanam (Villupuram Sessions Division), in Crl.M.P.No.410/2014 in Sessions Case No.215/2010 dated 27.10.2014.

For Petitioner  
in both Crl.R.Cs : Mr.R.Srinivas

For Respondent : Ms.Kritika Kamal.P  
in both Crl.R.Cs Government Advocate (crl.side)

COMMON ORDER

On the complaint lodged by one Ramakrishnan, the respondent Police registered a case in Crime No.178/2003 on 24.02.2003 for the offences under Sections 147, 148, 323, 324, 341, 436 and 307 I.P.C., in connection with the attack on one Arumugam on 24.02.2003. After the attack, Arumugam succumbed to the injuries and therefore, the case in Crime No.178/2003 was altered and Section 302 I.P.C., was included.

2.After completing the investigation, the respondent Police filed final report before the Judicial Magistrate No.1, Villupuram, which was taken on file as P.R.C.No.3/2005. In the final report in Crime No.178/2003, the following persons were shown as accused:-

"Palaniappan, Karunakaran, Thyagu,  
Rayar, Karthick, Nedunchezian, Sudhakar,  
Veerapan and Mohan."

3.In and around the same time and same place on 24.02.2003, another occurrence took place in which one Velmurugan and three others were attacked and on the complaint given by one Subramani, the respondent Police registered a case in Crime No.179/2003 on 24.02.2003 for offences under Sections 147, 148, 323, 324, 341 and 307 I.P.C. Since, Velmurugan succumbed to the injuries, the F.I.R., was altered and Section 302 I.P.C., was included.

4.After completing the investigation in Crime No.179/2003, the Police filed final report before the Judicial Magistrate No.1, Villupuram, which was taken on file as P.R.C.No.10/2006, in which, the following persons were shown as accused:-

"Palaniappan, Thyagu, Kandan,  
Periyasamy, Prem's @ Thirumalaivasan, Ramu @  
Ramamurthy, Sambu, Anthonyraj, Sundaravel,  
Alammal."

5.On a perusal of the two final reports, it is seen that Palaniappan is A.1 in both the cases, namely, Crime Nos.178 of 2003 and 179 of 2003. Apart from Palaniappan, there are also others who are common accused in both the cases. Some of the witnesses in both the cases are also common.

6.The case in Crime No.178/2003 was committed to the Court of Session and taken on file as S.C.No.94/2005 for trial before the Sessions Court, Villupuram. At that juncture, Palaniappan took a plea that the cases in Crime Nos.178/2003 and 179/2003 should be tried together and there should not be separate trials. This plea was rejected by the trial Court, challenging which, Palaniappan approached this Court in Criminal Revision Case No.392 of 2008 and this Court by order dated 10.09.2009, directed that the trial in both the cases should be conducted simultaneously.

7.In view of the above, the case in Crime No.179/2003 was committed to the Court of Session, Villupuram and taken on file as S.C.No.215/2010. When trial began in S.C.No.94/2005, Palaniappan filed CrI.M.P.Nos.10124 & 10125 of 2007 under Section 91 Cr.P.C., calling for certain documents. To be more specific, in CrI.M.P.No.10124/2007, Palaniappan demanded the production of the following documents:-

“Schedule

| Serial No. | Description of Document                                                                          | Place from which it has to be summoned                               |
|------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| 1.         | General Diary 24-02-2003 to 01-03-2003                                                           | Villupuram Taluk Police Station                                      |
| 2.         | F.I.R Book with Counterfoil covering Crime Number 178 of 2003 and dates 20.02.2003 to 28.02.2003 | Villupuram Taluk Police Station                                      |
| 3.         | Police Station Hospital/Medical Memo Register covering 24-02-2003 to 01-03-2003                  | Villupuram Taluk Police Station                                      |
| 4.         | Medico Legal Case intimation Memos sent from Hospital to police on 24-02-2003.                   | General Hospital Villupuram                                          |
| 5.         | Accident Register from dates 24.02.2003 to 01.03.2003                                            | General Hospital Villupuram                                          |
| 6.         | Case Sheet of 1. Ramakrishnan, 2. S.Arumugam (deceased), 3.Sowbaghiyam dated 24.02.2003          | General Hospital Villupuram                                          |
| 7.         | Post-mortem notes of S.Arumugam (Deceased) dated 24.02.2003                                      | General Hospital Villupuram                                          |
| 8.         | Police Pocket Diary Covering 24.02.2003 to 01.03.2003                                            | Investigation Officer                                                |
| 9.         | Police Pocket Diary Covering 24.02.2003 to 01.03.2003                                            | Police Constable 1345, Villupuram Taluk Police Station               |
| 10.        | Police Pocket Diary Covering 24.02.2003 to 01.03.2003                                            | Police Constable 712, Villupuram Taluk Police Station                |
| 11.        | Police Pocket Diary Covering 24.02.2003 to 01.03.2003                                            | Police Constable 1448, Villupuram Taluk Police Station               |
| 12.        | Police Pocket Diary Covering 24.02.2003 to 28.02.2003                                            | Police Constable 1072, Villupuram Taluk Police Station               |
| 13.        | Police Pocket Diary Covering 24.02.2003 to 28.02.2003                                            | Sub-Inspector of Police Mr.A.Rajan, Villupuram Taluk Police Station. |

8.In Crl.M.P.No.10125/2007, Palaniappan demanded the production of the following documents.

| Serial No. | Description of Document                                                               | Place from which it has to be summoned  |
|------------|---------------------------------------------------------------------------------------|-----------------------------------------|
| 1.         | Medico Legal Case intimation Memos sent from Hospital to Police on 24.02.2003         | Government General Hospital, Villupuram |
| 2.         | Accident Register from dates 24.02.2003 to 01.03.2003                                 | Government General Hospital, Villupuram |
| 3          | Case sheet of 1.Ramakrishnan, 2.S.arumugam (deceased), 3.Sowbaghiyam dated 24.02.2003 | Government General Hospital, Villupuram |
| 4          | Post mortem notes of S.Arumuvam (deceased) dated 24.02.2003                           | Government General Hospital, Villupuram |

9.The trial Court dismissed Crl.M.P.No.10124 of 2007 in S.C.No.94/2005 on 07.11.2007. However, the trial Court partly allowed Crl.M.P.No.10125/2007 in S.C.No.94/2005 on 07.11.2007 and directed production of Document No.3 alone namely:

| Serial No. | Description of Document                                                               | Place from which it has to be summoned  |
|------------|---------------------------------------------------------------------------------------|-----------------------------------------|
| 3          | Case sheet of 1.Ramakrishnan, 2.S.arumugam (deceased), 3.Sowbaghiyam dated 24.02.2003 | Government General Hospital, Villupuram |

10.Aggrrieved by the orders passed by the trial Court in Crl.M.P.Nos.10124 & 10125 of 2009 in S.c.No.94/2005, Palaniappan filed Crl.R.C.Nos.522 & 523 of 2009 before this Court.

11.Both the Criminal Revision Petitions were disposed of by this Court on 25.03.2013, under which, this Court allowed Crl.R.C.No.522 of 2007 and set aside the order in Crl.M.P.No.10125 of 2009 and directed the prosecution to submit documents 1,2 and 4 also namely:

| Serial No. | Description of Document                                                       | Place from which it has to be summoned  |
|------------|-------------------------------------------------------------------------------|-----------------------------------------|
| 1.         | Medico Legal Case intimation Memos sent from Hospital to Police on 24.02.2003 | Government General Hospital, Villupuram |
| 2.         | Accident Register from dates 24.02.2003 to 01.03.2003                         | Government General Hospital, Villupuram |
| -          | -----                                                                         | ----                                    |
| 4          | Post mortem notes of S.Arumuvam (deceased) dated 24.02.2003                   | Government General Hospital, Villupuram |

12.However, this Court, partly allowed CrI.R.C.No.523 of 2009 and directed the prosecution to produce documents Sl.Nos.5, 6 & 7 mentioned in CrI.M.P.No.10124/2007, namely:-

| Serial No. | Description of Document                                                                 | Place from which it has to be summoned |
|------------|-----------------------------------------------------------------------------------------|----------------------------------------|
| --         | ---                                                                                     | ---                                    |
| 5.         | Accident Register from dates 24.02.2003 to 01.03.2003                                   | General Hospital Villupuram            |
| 6.         | Case Sheet of 1. Ramakrishnan, 2. S.Arumugam (deceased), 3.Sowbaghiyam dated 24.02.2003 | General Hospital Villupuram            |
| 7.         | Post-mortem notes of S.Arumugam (Deceased) dated 24.02.2003                             | General Hospital Villupuram            |
| --         | ---                                                                                     | ---                                    |

13.However, this Court has stated that those documents cannot be furnished to the accused and that thus can only be referred to by the Court for its guidance.

14.When the trial in S.C.No.94/2005 began before the learned Principal Sessions Judge, Villupuram, the accused took the plea that the trial Judge should conduct the trial along with S.C.No.215/2010, in terms of the earlier order passed by this Court in CrI.R.C.No.392 of 2008 dated 10.09.2009.

15.According to the accused, the trial Judge did not heed to this request. Therefore, the accused filed CrI.O.P.Nos.19158 & 19159 of 2010 for transfer of both the cases namely, S.C.No.94/2005 and S.C.No.215/2010 from out of the Court of the Principal District and Sessions, Villupuram to any other competent Court.

16.This Court by order dated 18.08.2010 in CrI.O.P.Nos.19158 & 19159 of 2010 has transferred both the cases to the file of the Fast Track Court No.1, Tindivanam. When the trial in S.C.No.94/2005 began before the transferee Court, namely the Fast Track Court No.1, Tindivanam, Palaniappan filed C.M.P.No.409/2014 in S.C.No.94/2005 for the production of the records which were directed to be produced by this Court in the order dated 25.03.2013 in CrI.R.C.Nos.522 and 523/2009.

17.The trial Court has dismissed C.M.P.No.409/2014 in S.C.No.94/2005 by passing the following order on 20.10.2014.

"20.10.14

Certain documents have been sought from VPM T.K.P.S.Police have given the reply stating that they are not available as 10 years have lapsed. Some more docts. Have been sought from G.H., Villupuram. The Ss have been sent thro' Police already. All the docts relate to the year 2003. Nearly 11 years have lapsed. Whether the Police is able to produce docts from GH, VPM, or not, the trial has to be proceeded on 27.10.14 as there is direction of Hon'ble H.C.c/o 27.10.14."

18.Challenging this order, Palaniappan has filed CrI.R.C.No.1141/2014 and has obtained an order of interim stay of further proceedings in S.C.No.94/2005. To recapitulate, along with S.C.No.94/2005, the trial in S.C.No.215/2010 is also pending on the file of the Fast Track Court No.1, Tindivanam. In that case, one of the co-accused by name Rayar filed C.M.P.No.410/2014 in S.C.No.215/2010 with the following prayer:-

"It is therefore prayed that this Hon'ble Court may be pleased to adjourn the trial of S.C.No.215 of 2010 till the production of the documents which were directed to be produced by this Hon'ble Court, by order dated 29.10.2013 in CrI.M.P.No.357/2013 and 358/2013 and thus render justice."

19.The trial Court has dismissed C.M.P.No.410/14 in S.C.No.215/2010 by passing the following order on 20.10.2014:

"20.10.14

Certain documents have been sought from Villupuram Taluk Police Station. Police have given the reply stating that they are nto

available as 10 years have lapsed. Some more documents have been sought from Government Hospital, Villupuram. The summons have been sent through Police already. All the documents relate to the year 2003. Nearly 11 years have lapsed. Whether the Police is able to produce documents from Government Hospital, Villupuram, or not, the trial has to be proceeded on 27.10.14 as there is direction of Honourable High Court Call on 27.10.14."

Challenging the order, Rayar has filed CrI.R.C.No.1142 of 2014 before this Court and obtained an order of interim stay of all further proceeding in S.C.No.215/2010.

20.From the year 2014 to 2016, both the revision petitions were pending on the file of this Court and for the non appearance of the revision petitioners, the same were dismissed for default by this Court on 09.08.2016. Thereafter, Palaniappan and Rayar filed restoration petitions which were allowed by this Court on 05.01.2017 and ultimately, the matter is now coming up before this Court for hearing in November 2018.

21.Heard Mr.R.Srinivas, learned counsel for the petitioners and Ms.Kritika Kamal.P, learned Government Advocate (crl.side) appearing for the State.

22.Mr.R.Srinivas, learned counsel for the petitioners contended that the trial Court ought not to have dismissed the pleas vide the impugned orders especially, in the light of the fact that this Court has allowed CrI.R.C.Nos.522 & 523 of 2014.

23.Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that on account of efflux of time, the documents are not available in the Department and therefore, the prosecution cannot be forced to produce unavailable documents.

24.This Court gives its anxious consideration to the rival submissions.

25.The fact remains that for two murders that occurred in the year 2003, petitions after petitions have been filed by the accused for one reason or the other and the trial has prolonged till 2018. It is true that in CrI.R.C.Nos.522 and 523 of 2009, this Court had directed the production of certain documents to the accused. Just because this Court had issued such directions, if the documents are not available now at this distant point of time, neither the trial can be stalled nor the accused acquitted straightaway. The petitions under Section 91 Cr.P.C., were filed in the year 2007, in

respect of an incident which took place in the year 2003, which were denied by the trial Court in part but however, this Court in Crl.R.C.Nos.522 and 523 of 2009 by order dated 25.03.2013, had permitted to call for certain documents.

26. In the opinion of this Court, even an adverse inference cannot be drawn against the respondent because, the documents called for by the accused were not suppressed by the respondent Police. Most of the documents that were called for by the accused are from the documents of the Government Villupuram Medical College and Hospital, Villupuram and they are not under the control of the Police. An adverse inference against a party can be drawn only when, despite the order of the Court, he fails to produce the documents which are in his/their custody.

27. However, it is seen from the records that this Court has passed the following order on 07.01.2016 in these two Criminal Revision cases (Crl.R.C.Nos.1141 & 142 of 2014):-

"The following hospital records are to be produced before this Court towards aiding disposal of Crl.R.C.Nos.1141 and 1142 of 2014:

1. Medico Legal Case intimation Memos sent from Hospital to Police on 24.02.2003.

2. Accident Register from dates 24.02.2003 to 01.03.2003.

3. Case Sheet of persons viz., Ramakrishnan, S.Arumugam (deceased, Sowbaghiyam dated 24.02.2003, Anadhayi, Velmurugan (deceased), Devaki, Muthukrishnan, Subramani and Mahalingam.

4. Postmortem notes of S.Arumugam (deceased) and Velmurugam (deceased) dated 24.02.2003.

Accordingly, the Dean, Government Hospital, Villupuram, is directed to cause production of documents which are listed herein above. The same may be forwarded in a sealed cover to the Registrar (Judicial) of this Court on or before 21.01.2016.

Post on 22.01.2016."

28. Pursuant to the said order, Dr.M.Vanithamani, MS., M.Ch., (CTS), Dean, Government Villupuram Medical College & Hospital, Villupuram by communication dated 20.04.2017, to the Registrar

Judicial of this Court, has stated as follows:-

"As directed in the reference cited, the following registers in original have already been forwarded in favour of your kind perusal and further action.

1.Accident register pertaining to the period of 24.02.2003 to 27.02.2003.

2.Accident Register pertaining to the period of 28.02.2003.

3.Accident Register pertaining to the period of 28.02.2003 to 03.03.2003.

4.Post mortem certificate from PM No.40/2003 to 63/2003.

In this regard I am to state that, the case sheets of Mr.Ramakrishnan, S.Arumugam (deceased), Ms.Sowhaghiyam dated 24.02.2003 are not available."

29.Along with the said communication, the Dean, Government Villupuram Medical College and Hospital, Villupuram, has sent the original document Nos.1 to 4 referred to above and the same are available on the file of this Court. On a perusal of this original records that have been received from the Dean, Government Villupuram Medical College and Hospital, Villupuram, they not only relate to the cases at hand namely, S.C.Nos.94/2005 & 215/2010, but also, relate to other criminal cases in the District. These documents have to be maintained by the Government Villupuram Medical College and Hospital, Villupuram, and cannot be retained either by this Court or by the trial Court, thereby denying their usage in other criminal cases. Therefore, this Court directs the Deputy Registrar, Criminal Section, High Court, Madras, to take photocopy of all the pages of the original document Nos.1 to 4 and certify the same as true copy. Certified photo copy of those documents shall be sent to the Additional District and Sessions Judge No.1, Tindivanam, through a Special Messenger. The original records shall be sent by the same Special Messenger to the Government Villupuram Medical College and Hospital, Villupuram. The certified copies of the above documents can be relied upon by the defence before the trial Court, as primary evidence. Since, they are certified copies of public records, the accused will be entitled to peruse the same on filing a memo of inspection.

30.The trial Court is directed to proceed with the trial in S.C.Nos.94/2005 and 215/2010 and complete the same, within a

period of six months from the date of receipt of a copy of this order. If any of the accused abscond(s), a fresh F.I.R., should be registered against him/them under Section 229-A I.P.C. The trial Court shall ensure that the witnesses shall be cross examined on the day of their examination in chief, as held by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab ((2015) 3 SCC 220). If any of the accused adopt dilatory tactics, he/they can be remanded to custody under Section 309 Cr.P.C., in the light of the law laid down by the Hon'ble Supreme Court in State of Uttar Pradesh v. Shambhu Nath Singh (JT 2001 (4) SC 319).

31. With the above observations, the Criminal Revision Cases are dismissed and the orders passed by the learned Additional District and Sessions Judge, No.1, Tindivanam, in Crl.M.P.Nos.409 & 410 of 2014 in Sessions Case Nos.94 of 2005 and 215 of 2010 respectively, dated 27.10.2014 shall stand confirmed.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

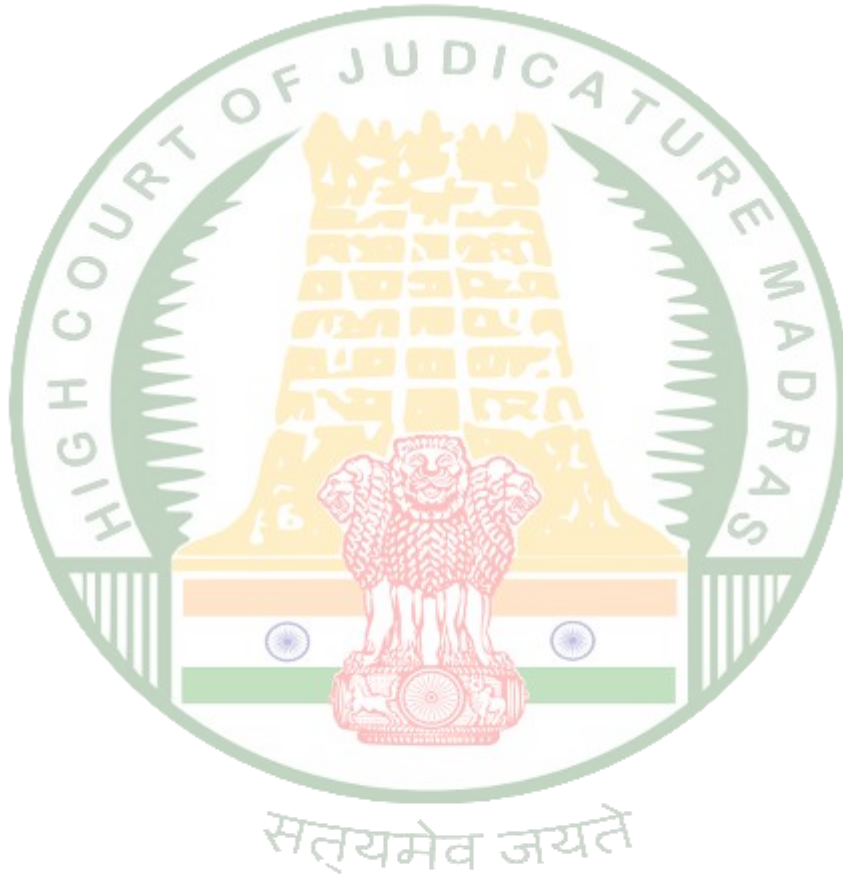
1. The Additional District and Sessions Judge, No.1, Tindivanam. (The Certified Photo copies of Records in Crl.Rc. 1141 and 1142/2014 were sent by Special messenger on 30.11.2018)
2. The Dean,  
Government Villupuram Medical College and Hospital,  
Villupuram.
3. Mr. Navinkumar,  
Medical Records Officer (MRO),  
Govt. Villupuram Medical College Hospital,  
Villupuram. (The records were sent in High Court Criminal RC.No.1141 and 1142/14 and Ref.No.218/86/2016 by Special Messenger on 30.11.2018)
4. The Registrar Judicial,  
High Court, Madras.
5. The Deputy Registrar,  
Criminal Section,  
High Court, Madras.

6.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.A.Sakthivel, Advocate, S.R.No.78061  
+1cc to Mr.R.Srinivas, Advocate, S.R.No.78062

Cr1.R.C.Nos.1141 & 1142 of 2014

rrs 05/12/2018



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