

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.950 of 2013 and
M.P.No.1 of 2013

Sundaram

...Petitioner

Vs.

1. State by

The Inspector of Police,
Arachalur Police Station,
Erode District.
(Crime No.192/2011)

2. Subramani

...Respondents

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 03.04.2013 made in C.M.P.No.1445 of 2012 in C.C.No.279 of 2011 on the file of the learned Judicial Magistrate II, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Ms.V.Sarathadevi,
Govt. Advocate (Crl.Side) For R1
Mr.Guruprasad for R2

ORDER

Based on the complaint given by the petitioner/defacto complainant on 11.07.2011, FIR has been registered in Crime No.192 of 2011 under Sections 294 (b), 324 & 506 (ii) of IPC by Inspector of Police, Arachalur Police Station and after enquiry the Police has filed a final report the same was forwarded to the learned Judicial Magistrate II, Erode, which was taken on file in C.C.No.279 of 2011.

2 Pending trial, 1st respondent police has filed a petition in C.M.P.No.1445 of 2012 seeking to alter the charge under Section 307 IPC and to commit the case to the Court of Sessions. The learned Magistrate II, Erode, after hearing both

sides, had dismissed the petition by order dated 03.04.2013.

3 Aggrieved against the order dated 03.04.2013, the defacto complainant has preferred this present criminal revision.

4 The learned counsel for the petitioner would submit that subsequent to chief examination of P.W.1, since there is prima facie allegation against the accused to frame charge under Section 307 IPC, the state has filed a petition seeking to alter the charge. The Court below, even there is materials available to frame charge under section 307, has dismissed the petition preferred by the State. The learned counsel for the petitioner has relied on the decision rendered by the Hon'ble Supreme Court reported in 2016 (2) CTC 767, wherein it was held that even though, charges can be alter at any stage and before pronouncement of judgment, when there is prima facie material to alter the charge, the Court can very well do the same. Hence the order dated 03.04.2013 dismissing the petition preferred by the State warrants interference of this Court.

5 Heard and perused the materials available on record.

6 Perusal of FIR, Charge Sheet and chief examination of P.W.1, would clearly show that there is prima facie allegation to alter charge under Section 307. Hence this Court is of the view that, even though charges can be altered at any stage, when there is prima facie allegation to alter the charge, the Court need not wait till completion of trial.

7 In view of the above, the order dated 03.04.2013 passed by the Court below is hereby set aside and the learned Magistrate is directed to commit the case to the Sessions Court, Erode, for further trial, since the offence under Section 307 IPC is triable by Sessions Court and the Sessions Court, Erode, is directed to frame charge under Section 307 of IPC and dispose of the case within a period of six months from the date of receiving of the entire case bundle.

8 Accordingly, the criminal revision is allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate II, Erode.

2. The Sessions Court, Erode.

3. The Inspector of Police,
Arachalur Police Station,
Erode District.

4. The Public Prosecutor,
High Court, Madras.

5. The Section Officer,
Criminal Section,
High Court, Madras

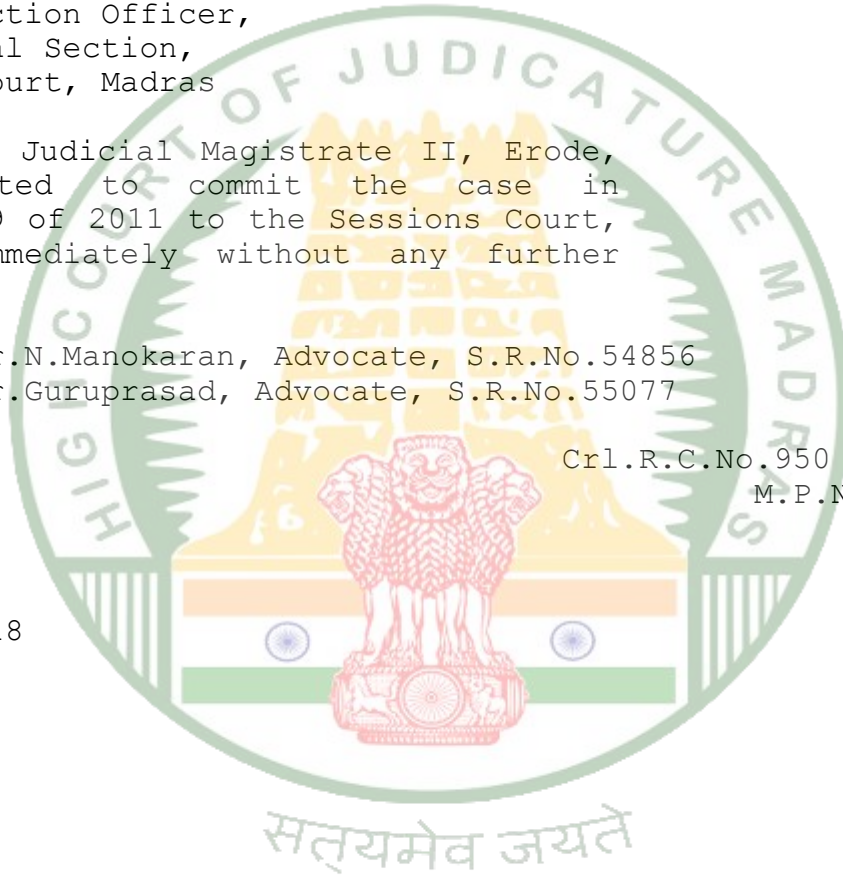
Note: The Judicial Magistrate II, Erode,
is directed to commit the case in
C.C.No.279 of 2011 to the Sessions Court,
Erode, immediately without any further
delay.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.54856

+1cc to Mr.Guruprasad, Advocate, S.R.No.55077

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AK(CO)
CS/11/09/18



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