

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

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

Crl.O.P. No.15521 of 2018 & Crl.M.P. No.7923 of 2018

Ramachandar @ Ramachandran

Petitioner

vs.

The State represented by
the Inspector of Police
Sankagirii Police Station
Salem District
(Cr. No.799 of 2014)

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records relating to order in C.M.P. No.13 of 2018 in S.C. No.101 of 2015 dated 05.04.2018 pending on the file of the II Additional District Court, Salem and set aside the same.

For petitioner : Mr. T. Gowthaman

For respondent : Mrs. Kritika Kamal P.
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been preferred seeking to call for the entire records relating to the order dated 05.04.2018 passed in C.M.P. No.13 of 2018 in S.C. No.101 of 2015, pending on the file of the II Additional District Court, Salem and set aside the same.

2 The petitioner is facing prosecution in S.C. No.101 of 2015 before the Additional District and Sessions Court No.II, Salem, for the offences under Sections 147,148,341,364,120-B, 302 and 201 IPC. The prosecution completed their evidence and the accused was examined under Section 313 Cr.P.C.

3 When the matter was posted for arguments, the accused filed an application in C.M.P. No.13 of 2018 in S.C. No.101 of 2015 under Section 91 Cr.P.C., calling for certain documents relating to the police station records.

4 After hearing either side, the Trial Court, by order dated 05.04.2018, has dismissed C.M.P. No.13 of 2018, aggrieved by which, the accused is before this Court.

5 Heard Mr. Gowthaman, learned counsel for the accused and Mrs. Kritika Kamal, learned Government Advocate (Crl. Side).

6 The learned counsel for the accused contended the documents sought by the accused are essential in order to show that Shanmugam (A.2) would not have given extra the judicial confession to the Village Administrative Officer. He further contended that the accused were brought before the Judicial Magistrate No.I, Sankagiri for remand on 20.12.2014 at 21.45 hrs. and therefore, within the time of the alleged arrest and production before the Magistrate, the Investigating Officer could not have performed the impossible feat of recording the confession statements of the arrested accused.

7 Per contra, the learned Government Advocate (Crl. Side) refuted the contention put forth by the learned counsel for the accused.

8 This Court gave its anxious consideration to the rival submissions.

9 An order under Section 91 Cr.P.C. can be issued only if it is established that a document is necessary or desirable for the purpose of any investigation, enquiry, trial or other proceedings under the Code. In State of Orissa vs. Debendra Nath Padhi [2004 AIR SCW 6813], the Supreme Court has clearly held that the power under Section 91 Cr.P.C. cannot be invoked to make a fishing enquiry.

10 In this case, the fact in issue is whether the accused had committed the murder. The records relating to the police station, which the accused is seeking to produce, admittedly came into existence after the registration of the F.I.R. Therefore, they would not throw any great light on the fact in issue. However, the order of first remand passed by the Judicial Magistrate at the time the accused were produced after the arrest, may assume significance for the defence to show the timing between the alleged time of arrest and the time of production before the Magistrate. This is a judicial record and would require no further proof.

11 In fine, this Court does not find any infirmity in the order passed by the Trial Court warranting interference. However, the Trial Court shall ensure that the first order of remand passed by the Judicial Magistrate is made available for

perusal of the defence during the course of arguments.

With the above direction, this Criminal Original Petition is closed. Connected CrI.M.P. is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Sankagiri Police Station
Salem District

2 The II Additional District Court
Salem

3 The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to Mr.T.Gowthaman, Advocate SR.No.38359

CrI.O.P. No.15521 of 2018

GN(21/06/2018)

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