

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.18555 AND 18556 of 2018

M.Chitraipandian

.. Petitioner
in both Crl.OPs

Vs

State rep. by
The Inspector of Police,
Central Crime Branch-II,
Team-I, Greater Chennai,
Vepery, Chennai-7.

.. Respondent
in both Crl.OP

Crl.O.P.No.18556 of 2018 has been filed under Section 482 Cr.P.C., praying to pass an order to transfer the case by withdrawing the case from the file of the Judicial Magistrate Court, Alandur in C.C.No.1018 of 2012 to some other court.

Crl.O.P.No.18555 of 2018 has been filed under Section 482 Cr.P.C., praying to pass an order to expunge the chief-examination of PW1 dated 10.06.2018 and direct the trial Court to conduct fresh examination of PW1 and permit him to file proof affidavit for chief examination on health ground in the case in C.C.No.1018 of 2012.

For Petitioner : Mr.T.Ravidevan
in both Crl.OPs

For Respondent : Mr.C.Raghavan, GA
in both Crl.OPs

COMMON ORDER

On the complaint lodged by the petitioner, the respondent Police registered a case in Crime No.163 of 2009 and after completing the investigation, filed a charge sheet in C.C.No.1018 of 2012 before the Judicial Magistrate, Alandur against 12 accused for the offences under Section 419, 420, 468 and 471 IPC. It is the case of the de facto complainant that Sunny Nayagam [A1] and Moorthy [A2] had illegally sold 4891 sq.ft. of land belonging to Gopal [LW2] by impersonation. After

the charges were framed, the petitioner/de facto complainant was examined as PW1 on 18.04.2018. In the chief examination, it has been recorded as follows :

“என்னிடமிருந்து சன்னி நாயகம் ரூபாய் 3 லட்சம் கடன் பெற்றதற்கு தான் அந்த நிலங்களை கிரையம் செய்து கொடுத்தார்கள், ”

After the chief-examination, the accused have not cross-examined the said witness and therefore, the Magistrate has recorded as no cross. While so, the petitioner/de facto complainant has filed Crl.O.P.No.18556 of 2018 for transferring the case from the file of the Judicial Magistrate Court, Alandur to any other Court.

2.Heard the learned counsel for the petitioner/de facto complainant and the learned Government Advocate.

3.Learned counsel for the petitioner submitted that it is the specific case of the de facto complainant that Sunny Nayagam [A1] and Moorthy [A2] had cheated the de facto complainant and his brother-in-law Gopal [LW2]. While that being the case, the Assistant Public Prosecutor in charge of the case had mislead the evidence of PW1 and the above averment has been recorded in the deposition which goes against the basis of the prosecution. Hence, he submitted that the case requires to be transferred to any other Court.

4.He has also filed Crl.O.P.No.18555 of 2018 to expunge the entire evidence that was recorded on 18.04.2018.

5.In the opinion of this Court, evidence once recorded in the criminal court in the presence of the accused, cannot be expunged. Every criminal court is a court of record, though not under the context of a court of record used in Article 215 of the Constitution of India. Every criminal court record has to be maintained for a certain period of time as a public document. Hence, Crl.O.P.No.18555 of 2018 stands dismissed.

6.Coming to the prayer in Crl.O.P.No.18556 of 2018, it is seen that the de facto complainant had signed the deposition before leaving the Court. Now, he cannot say that the deposition has been wrongly recorded. However, if the trial Court is of the view that the above said averment was wrongly recorded, it is always open to the trial Court to exercise its power under Section 311 Cr.P.C. to recall PW1 for further examination, in order to clarify the above aspect. This power under Section 311 Cr.P.C. can be invoked suo moto by the trial Court, if it is satisfied that the above averment was mistakenly recorded. This Court cannot step into the shoes of the trial Court and give a finding in this regard, because this Court had

not seen the demeanour of the witness. In any event, this one averment by itself cannot demolish the prosecution case, especially, when Gopal has not yet been examined.

With the above observation, Crl.O.P.No.18556 of 2018 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Central Crime Branch-II,
Team-I, Greater Chennai,
Vepery, Chennai-7.

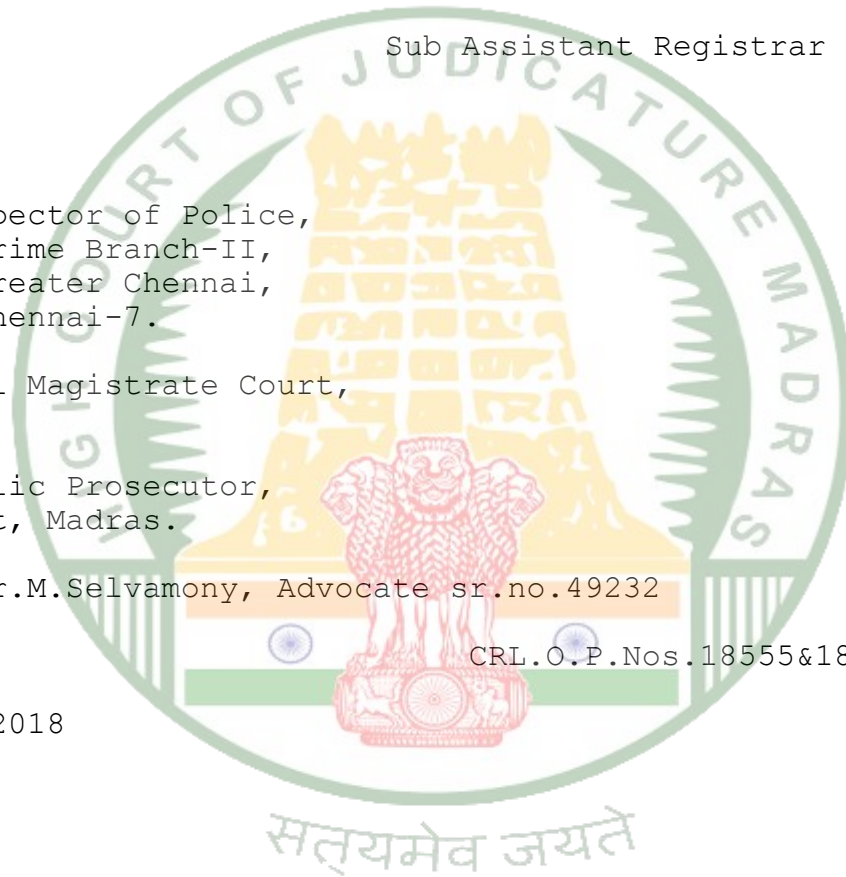
2.Judicial Magistrate Court,
Alandur.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Selvamony, Advocate sr.no.49232

CRL.O.P.Nos.18555&18556 of 2018

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