

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26670 of 2018
and
Crl.M.P.No.15363 of 2018

R.Selvam

... Petitioner

Vs.

1.State of Tamil Nadu
Rep. by Station House Officer,
Thittakudi P.S.
Thittakudi.

2.K.Mani
3.M.Dhanraj
4.P.Abithan

...Respondents

Prayer: Criminal Original petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in C.M.P.No.49 of 2018 in C.C.No.1 of 2013 dated 16.08.2018 by the Judicial Magistrate Court, Tittagudi and allow the petition.

For Petitioner : Mr.P.Paramasiva Doss

O R D E R

This petition has been filed challenging the order passed by the Court below in dismissing the application filed for permitting the petitioner to carry on with the prosecution in the place of the Public Prosecutor and also to alter the charges. The Court below dismissed the application by an order dated 16.08.2018.

2. The learned counsel for the petitioner would submit that the petitioner is the hereditary trustee of the Temple and the property of the temple is the subject matter of the case pending in C.C.No.1 of 2013, before the learned Judicial Magistrate Court, Thittagudi. The learned counsel would further submit that the accused persons were tried by the Court below for an offence under Sections 318 and 414 of Indian Penal Code. According to the learned counsel for the petitioner, the

prosecution is not properly conducting the case and the proper witnesses are not being examined before the Court below. Therefore, the petitioner has filed an application before the Court below under Section 302 of Criminal Procedure Code, seeking for the above said relief.

3. The Court below while deciding the application, has bestowed its attention only insofar as the alteration of charges is concerned. The entire finding of the Court below is with regard to issue of alteration of charges. The learned counsel would submit that insofar as the alteration of charges is concerned, the Court below by itself has sufficient power under Section 216 of Criminal Procedure Code and the Court below can alter the charges at any stage before the passing of the Judgment. Therefore, the learned counsel would submit that the petitioner is not aggrieved by that portion of the order. However, the learned counsel for the petitioner would submit that the Court below did not even consider the request made by the petitioner seeking for conducting the prosecution case.

4. As rightly pointed out by the learned counsel for the petitioner, the Court below has not considered the issue with regard to conducting the prosecution by the petitioner in line with the provisions under Section 302 of Criminal Procedure Code. In view of the facts and circumstances of the case, the Court below is directed to consider the prayer made by the petitioner to conduct the prosecution under section 302 of Criminal Procedure Code. The Court below shall be guided by the Judgment of the Hon'ble Supreme Court reported in J.K.International vs. State (Govt. of NCT of Delhi) and others, (2001) 3 SCC 462 and reported in Dhariwal Industries Ltd., vs. Kishore Wadhvani and ors. 2016 (3) MWN (Cr.) 161 SC.

5. The Court below shall be guided by the settled principles of law in this regard and the Court below shall take a decision in this regard within ten days from the date of receipt of a copy of this order.

6. In the result, the Criminal Original Petition is partly allowed and the Court below is directed to conduct the proceedings further in the case in accordance with the directions issued by this Court, herein above.

nmm/dss

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate Court,
Tittagudi.

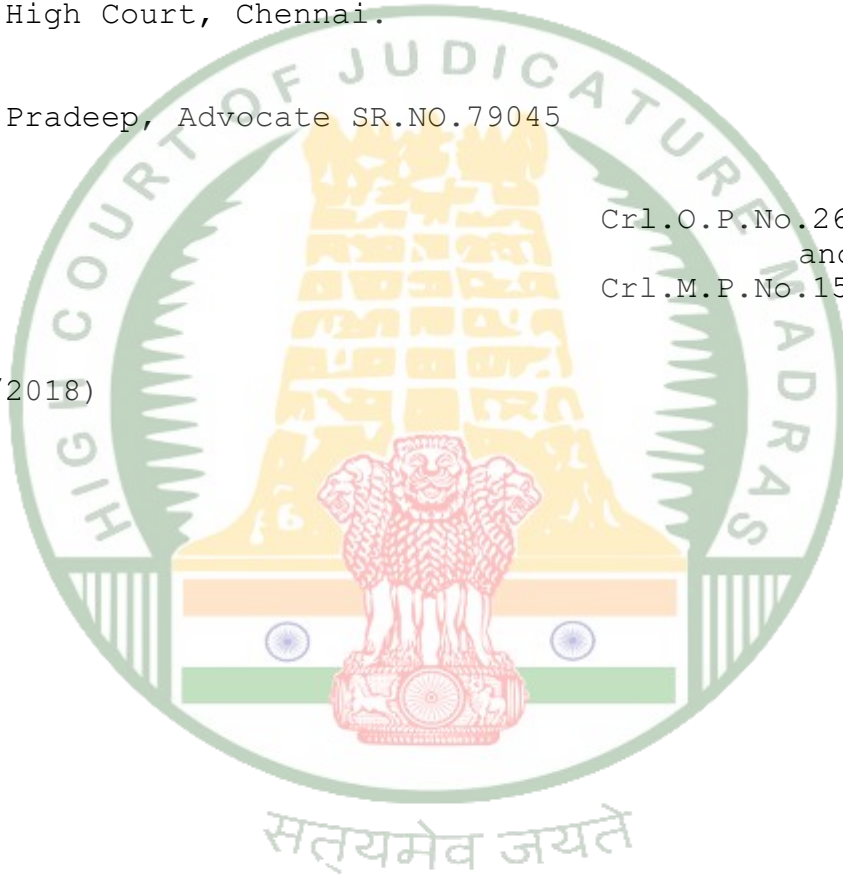
2.The Station House Officer,
State of Tamil Nadu,
Thittakudi P.S.
Thittakudi.

3.The Public Prosecutor,
Madras High Court, Chennai.

+1CC Mr.J.Pradeep, Advocate SR.NO.79045

Crl.O.P.No.26670 of 2018
and
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DR (CS)
KAK (29/11/2018)



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