



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Thirteenth day of February Two Thousand Eighteen
PRESENT

The Hon`ble Dr.Justice S.VIMALA

and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

Crl.M.P.Nos.763 to 765 of 2018
Crl.M.P.Nos.11237 to 11239 of 2016
in Crl.A.(MD) Nos.290 to 292 of 2015

Crl.M.P.No.763 of 2018 in Crl.A.(MD) No.290 of 2015:

STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, MADURAI.
(CRIME NO.446/2012),
(SIVAGANGAI TALUK P.S),
SIVAGANGAI DISTRICT.

... PETITIONER/ PETITIONER/ RESPONDENT
Vs

1 AGNIRAJ
2 SATHYARAJ
3 PAULPANDI

... RESPONDENTS/ RESPONDENTS/ ACCUSED 2, 3 & 4

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to modify the order dated 07.09.2017 made in the above Crl.M.P.No. 11237 of 2016 in Crl.A.(MD).No.290 of 2015 to the effect that instead of Mr.M.Muthusankaralingam, Present Investigating Officer/ Deputy Superintendent of Police, the Original Investigating Officer, namely Mr.I.Thayalan Tamilselvan, retired Deputy Superintendent of Police may be directed to be examined further in the case in S.C.No.72 of 2013 on the file of the Sessions Judge, Sivagangai.

Prayer in CRL MP(MD). 11237/ 2016 in Crl.A.(MD) No.290 of 2015:

To recall the following witnesses Nos. 1)PW.35 Mr.Vijayan, 2) PW.57 Mr.Thayalan Tamilselvan for further evidence and to examine Additional Witnesses of the following persons 1) F.Jerry Louis, HC.182, Now SSI., CBCID., Sivagangai 2) S.Jeeva, Assistant Manager, Kaleeswarar Mills, Kalaarkovil, 3) Dr.Manivannan, 4) Dr.R.Kim, 5) D.Chandrakumar, Inspector Q Branch, Sivagangai, 6) Tr.Peter, Inspector Vigilance and Anti Corruption, Sivagangai District and 7) Tr.Aravindan, (Nodal Officer) in Crl.A(MD).No.292/2015 on the file of this Honourable High Court in SC.No.72/2013 on the file of the Sessions Judge, Sivagangai so as to take Additional Evidence.

Prayer in CRL A(MD). 290/ 2015 :

<https://hcservices.ecourts.gov.in/hcservices/>

Criminal Appeal filed under Section 374(2) of Cr.PC., to call for the records relating to the order passed in S.C.No.72/2013 dated



29.09.2015 on the file of the learned Sessions Judge, Sivagangai and set aside the same and acquit the appellants/accused from all the charges leveled against them.

CRL MP(MD). 764/ 2018 in Crl.A.(MD) No.291 of 2015:-

STATE REP.BY

THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, MADURAI.

(CRIME NO.446/2012),
(SIVAGANGAI TALUK P.S),
SIVAGANGAI DISTRICT.

... PETITIONER/ PETITIONER/ RESPONDENT

-VS-

YOGANATHAN

... RESPONDENT/ RESPONDENT/ ACCUSED NO.6

To modify the order dated 07.09.2017 made in the above Crl.M.P.No. 11238 of 2016 in Crl.A. (MD).No.291 of 2015 to the effect that instead of Mr.M.Muthusankaralingam, Present Investigating Officer/ Deputy Superintendent of Police, the Original Investigating Officer, namely Mr.I.Thayalan Tamilselvan, retired Deputy Superintendent of Police may be directed to be examined further in the case in S.C.No.72 of 2013 on the file of the Sessions Judge, Sivagangai.

Prayer in CRL MP(MD). 11238/ 2016 in Crl.A.(MD) No.291 of 2015:-

To recall the following witnesses Nos. 1)PW.35 Mr.Vijayan, 2) PW.57 Mr.Thayalan Tamilselvan for further evidence and to examine Additional Witnesses of the following persons 1) F.Jerry Louis, HC.182, Now SSI., CBCID., Sivagangai 2) S.Jeeva, Assistant Manager, Kaleeswarar Mills, Kalaarkovil, 3) Dr.Manivannan, 4) Dr.R.Kim, 5) D.Chandrakumar, Inspector Q Branch, Sivagangai, 6) Tr.Peter, Inspector Vigilance and Anti Corruption, Sivagangai District and 7) Tr.Aravindan, (Nodal Officer) in Crl.A(MD).No.292/2015 on the file of this Honourable High Court in SC.No.72/2013 on the file of the Sessions Judge, Sivagangai so as to take Additional Evidence.

Prayer in CRL A(MD). 291/ 2015 :

Criminal Appeal filed under Section 374(2) of Cr.PC., to call for the records relating to the order passed in S.C.No.72/2013 dated 29.09.2015 on the file of the learned Sessions Judge, Sivagangai and set aside the same and acquit the appellant/accused from all the charges leveled against him.

Crl.M.P.No.765 of 2018 in Crl.A.(MD) No.292 of 2015:

STATE REP.BY

THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, MADURAI.

(CRIME NO.446/2012),
(SIVAGANGAI TALUK P.S),
SIVAGANGAI DISTRICT.

... PETITIONER/ PETITIONER/ RESPONDENT



-VS-

1 V.ARJUNAN
2 SIVAKUMAR
3 VIJAYAKUMAR
4 SURESH @ LENINKUMAR
5 KARANTHAMALAI
6 GANESAN
7 JEYAKUMAR

... RESPONDENTS/RESPONDENTS/
ACCUSED NO.1,5,7 TO 11

To modify the order dated 07.09.2017 made in the above CrI.M.P.No. 11239 of 2016 in CrI.A. (MD).No.292 of 2015 to the effect that instead of Mr.M.Muthusankaralingam, Present Investigating Officer/ Deputy Superintendent of Police, the Original Investigating Officer, namely Mr.I.Thayalan Tamilselvan, retired Deputy Superintendent of Police may be directed to be examined further in the case in S.C.No.72 of 2013 on the file of the Sessions Judge, Sivagangai.

Prayer in CRL MP(MD). 11239/ 2016 in CRL A(MD). 292/ 2015 :

To recall the following witnesses Nos. 1)PW.35 Mr.Vijayan, 2) PW.57 Mr.Thayalan Tamilselvan for further evidence and to examine Additional Witnesses of the following persons 1) F.Jerry Louis, HC.182, Now SSI., CBCID., Sivagangai 2) S.Jeeva, Assistant Manager, Kaleeswarar Mills, Kalaarkovil, 3) Dr.Manivannan, 4) Dr.R.Kim, 5) D.Chandrakumar, Inspector Q Branch, Sivagangai, 6) Tr.Peter, Inspector Vigilance and Anti Corruption, Sivagangai District and 7) Tr.Aravindan, (Nodal Officer) in CrI.A(MD).No.292/2015 on the file of this Honourable High Court in SC.No.72/2013 on the file of the Sessions Judge, Sivagangai so as to take Additional Evidence.

Prayer in CRL A(MD). 292/ 2015 :

Criminal Appeal filed under Section 374(2) of Cr.PC., to call for the records relating to the order passed in S.C.No.72/2013 dated 29.09.2015 on the file of the learned Sessions Judge, Sivagangai and set aside the same and acquit the appellants/accused from all the charges leveled against them.

COMMON ORDER: These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.C.RAMESH, Additional Public Prosecutor for the petitioner in all the petitions and of Mr.S.G.L.RISHWANTH, Advocate for respondents in CrI.M.P.No.763 of 2018 in CrI.A. (MD) No.290 of 2015 and Mr.P.AJU TAGORE, Advocate for the respondent in CrI.M.P.No.764 of 2018 in CrI.A. (MD) No.291 of 2015 and MR.R.VENKATESWARAN, Advocate for the the respondents in



Crl.M.P.No.765 of 2018 in Crl.A.(MD) No.292 of 2015, the court made the following order:-

[Order of the Court was made by **S.VIMALA, J**]

The main appeals have been filed by the accused persons challenging their conviction in SC No.72/2013 on the file of the learned Sessions Judge, Sivagangai. 21 accused persons got tried, out of which, accused Nos.1 to 11 were convicted, while rest of the accused, ie., A12 to 21 were acquitted. Challenging the acquittal, the de-facto complainant has filed the appeal in Crl.A.(MD) No.230/2016 and the State has also preferred the appeal in Crl.A(MD) No.242/2016 against the acquittal.

2. In the applications filed by the State in Crl.M.P.Nos.11237 to 11239 of 2016, when a prayer was made seeking to record the evidence of certain witnesses, the learned Additional Public Prosecutor had asked for examination of the present Investigating Officer in the place of PW57, Dhayalan Tamilselvan. Those petitions were allowed vide order dated 24.11.2016. In those applications, a specific averment was made with reference to P.W.57 that he was sick and therefore, in his place, somebody, namely, the present Investigating Officer has to be substituted. Now, it is represented that P.W.57, the Investigating Officer, who was suffering from sickness, has recovered and therefore, he must be allowed to be examined as a witness.

3. This application is opposed by the respondents alleging that there is no material to support the contention that P.W.57 was sick once before and he has now recovered. It is also alleged that it is an attempt to fill up the lacuna and therefore, these applications should not be allowed. The contention raised by the learned counsel for the respondents is that it is not as if, the examination of the Investigating Officer has not been permitted at all, this Court has permitted the examination of present Investigating Officer and in his place, P.W.57 will be substituted, and in any event, the evidence of the prosecution will be brought on record either through P.W.57 or through the present Investigating Officer. This contention is acceptable. Moreover, the evidence being that of an investigating officer, would be mainly based on records only. Under such circumstances, the modification petitions are allowed.

sd/-
13/02/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

- 1 THE SESSIONS JUDGE, SIVAGANGAI.
 - 2 THE DEPUTY SUPERINTENDENT OF POLICE, CBCID, MADURAI.
 - 3 THE INSPECTOR OF POLICE, SIVAGANGAI TALUK POLICE STATION,
SIVAGANGAI DISTRICT.
 - 4 THE PUBLIC PROSECUTOR HIGH COURT, CHENNAI-104.
 - 5 THE ADDL.PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.
 - 6 THE SUPERINTENDENT,CENTRAL PRISON, TRICHY.
- +1CC TO M/S. R.VENKATESWARAN, Advocate, SR NO.2446

ORDER IN

CrI.M.P.Nos.763 to 765 of 2018 in
CrI.M.P.Nos.11237 to 11239 of 2016
in CrI.A.(MD) Nos.290 to 292 of 2015
Date :13/02/2018

MS/PM-PN/SAR.1/16.02.2018/5P.8C