



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2018

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Crl.O.P. (MD)No.9922 of 2018

State represented by
the Deputy Superintendent of Police,
Crime Branch C.I.D.,
Madurai City.

... Petitioner/Complainants

-vs-

Nirmala Devi

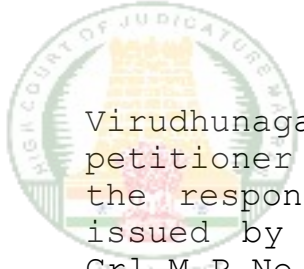
... Respondent/Accused-A1

Prayer: Criminal Original petition is filed under Section 482 of the Criminal Procedure Code to set aside the order in Crl.M.P.No.3362 of 2018, dated 07.06.2018 of the learned Judicial Magistrate No.II, Virudhunagar so far as the direction to take voice sample of the respondent / A1 / Nirmala Devi in Crime No.1 of 2018 on the file of the petitioner and consequential rejection order dated 13.06.2018 of the learned Judicial Magistrate No.II, Virudhunagar passed on the Memo dated 11.06.2018 filed by the petitioner to change the place of recording of the voice sample of the respondent from Madurai Prison as incorporated in the orders issued by the learned Judicial Magistrate No.II, Virudhunagar in Crl.M.P.No.3362 of 2018, dated 07.06.2018 to the office of the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai by giving suitable permission to take A1 Nirmala Devi to the above said office i.e., Office of the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai for recording of voice sample.

For Petitioner : Mr.K.Chellapandian
Additional Advocate General assisted by
Mr.K.K.Ramakrishnan
Additional Public Prosecutor
For Respondent : Mr.S.Mahalingam

O R D E R

This petition has been filed praying to set aside the order in Crl.M.P.No.3362 of 2018, dated 07.06.2018 of the learned Judicial Magistrate No.II, Virudhunagar so far as the direction to take voice sample of the respondent / A1 / Nirmala Devi in Crime No.1 of 2018 on the file of the petitioner and consequential rejection order dated 13.06.2018 of the learned Judicial Magistrate No.II,



Virudhunagar passed on the Memo dated 11.06.2018 filed by the petitioner to change the place of recording of the voice sample of the respondent from Madurai Prison as incorporated in the orders issued by the learned Judicial Magistrate No.II, Virudhunagar in CrI.M.P.No.3362 of 2018, dated 07.06.2018 to the office of the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai by giving suitable permission to take A1 Nirmala Devi to the above said office i.e., Office of the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai for recording of voice sample.

2. The petitioner/complainant filed a petition in CrI.M.P.No.3362 of 2018 before the learned Judicial Magistrate No.II, Virudhunagar, seeking for a direction to give voice sample of Nirmala Devi/A1 in Crime No.1 of 2018 by making her presence in front of the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai for fair investigation. The said application filed by the petitioner was allowed by the learned Judicial Magistrate No.II, Virudhunagar, by order dated 07.06.2018, permitting the petitioner to take a voice sample of the respondent at Madurai Central Prison by the Chennai Forensic Experts. Thereafter, the petitioner has filed a Memo before the learned Judicial Magistrate No.II, Virudhunagar seeking for modification of the order for recording the voice sample of A1 / Nirmala Devi before the Office of Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai - 4. The learned Judicial Magistrate No.II, Virudhunagar passed the impugned order without considering the submission of the petitioner Department. Challenging the above said impugned order dated 13.06.2018, the petitioner has filed the present Criminal Original Petition before this Court.

3. The learned Additional Advocate General appearing for the petitioner Department would submit that the learned Judicial Magistrate No.II, Virudhunagar, has not accepted the prayer of the petitioner for taking voice sample of the respondent for fair investigation before the Deputy Director of Physics Division, Tamil Nadu Forensic Sciences Department, Mylapore, Chennai, but the learned Judicial Magistrate No.II, Virudhunagar permitted the petitioner to take the voice sample before the Superintendent of Prison at Madurai.

4. Further, it is the submission of the learned Additional Advocate General that the voice test ought not to have been taken in the respondent prison for the reason that voice test is being taken only by a specialist and by using special equipments and the software facilities. In support of his contention, he has also filed a communication sent by the Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai - 4 addressed to the learned Judicial Magistrate No.II, Virudhunagar, Virudhunagar District by I.NO.3925/2018 dated 08.06.2018 and in paragraph No.2 of the said letter, it is stated as follows:



2. In this regard, it is brought to the kind notice of the Hon'ble Court that the recording of the control voice is carried out in an acoustically treated room using specialised equipments and licensed software tools available in Physics Division, Forensic Sciences Department, Chennai. The above mentioned infrastructure and equipments are absolutely necessary for recording and extracting the spectral features of the control voice samples, for the purpose of speaker identification. Hence, it is requested that the said female individual shall be produced before the undersigned with a letter of authority from the court, for recording the control voice samples at Physics Division, Forensic Sciences Department, Mylapore, Chennai-04.

5. Further, it is contended by the learned Additional Advocate General that the respondent/accused A1 has no objection, seeking the aforesaid prayer of the petitioner Department. However, the learned Judicial Magistrate No.II, Virudhunagar has passed the impugned order without considering the Memo filed by the petitioner. Hence, the same is liable to be set aside.

6. Mr.S.Mahalingam, learned counsel appearing for the respondent would submit that the respondent has no objection to appear before the Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai -4 and time frame shall be fixed by this Court for the appearance of the respondent before the Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai - 4, thereafter, to produce before the Superintendent of Special Cell for Women, Madurai.

7. From the aforesaid facts, the petitioner has filed an application in CrI.M.P.No.3326 of 2018 to grant permission for the appearance of Nirmala Devi before Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai -4 for recording her voice and by order dated 07.06.2018, the learned Judicial Magistrate has allowed the application, but the petitioner has challenged the portion of the order, directing the petitioner Department to take the voice sample of the respondent/A1 at Madurai Central Prison. From the aforesaid letter dated 08.06.2018, communicated by the Deputy Director of Forensic Department, it is stated that the said accused shall be produced before the aforesaid Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai -4, for recording the voice of the respondent/accused A1. Further, there is no objection for the respondent to give voice sample before the Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai. The petitioner has filed a Memo before the learned Judicial Magistrate No.II, Virudhunagar seeking for modification of the order for recording the voice sample of A1 / Nirmala Devi before the Office of Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai -4. The above facts has not appreciated by the Court below and passed the impugned order.



8. In the light of the above facts, this Court has no hesitation to set aside the impugned order dated 13.06.2018. Accordingly, this Court is inclined to pass the following order:

(ii) The impugned order passed in Memo dated 13.06.2018 is set aside;

(ii) The petitioner Department is permitted to take the respondent/A1 Nirmala Devi in Crime No.1 of 2018 from the Special Prison for Women at Madurai on 27.06.2018 and to appear before the Deputy Director of Physics Division, Forensic Sciences Department, Mylapore, Chennai -4, to take the voice test on 28.06.2018 and

(iii) thereafter, the respondent has to be produced before the Superintendent of Special Prison for Women at Madurai on 29.06.2018.

(iv) The petitioner Department has to make necessary arrangement to provide police escort as per the Rules.

9. In view of the above direction, the Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Superintendent of Special Prison for Women,
Madurai.
3. The Deputy Director of Physics Division,
Forensic Sciences Department,
Mylapore, Chennai - 600 004
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Deputy Superintendent of Police,
Crime Branch C.I.D., Madurai City.

AKV

TE/SB/SAR-1 : 26/06/2018 : 4P/6C

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