

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****ORDERS RESERVED ON : 24.09.2018****ORDERS PRONOUNCED ON: 27.09.2018**

WEB COPY

CORAM**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH****CrIOP(MD)No.15427 of 2018 and
CrIMP(MD)No.6812 of 2018**

Balachandran

... Petitioner

Vs

State,
represented by The Inspector of Police,
District Crime Branch,
Thanjavur.
[Crime No.8 of 1999]

... Respondent

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the learned Principal and Sessions Judge, Thanjavur in CrIRC No.31 of 2016 in CrMP No.3867 of 2016 in CC No.109 of 2011 and set aside the order dated 27.07.2018.

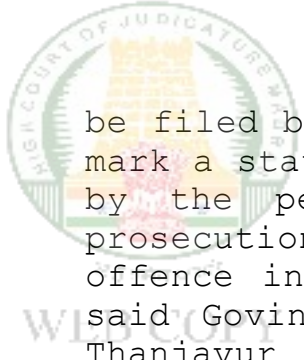
For Petitioner :Mr.M.Karunanithi

For Respondent :Mr.K.Suyambulinga Bharathi,
Government Advocate (crlside)**ORDER**

This petition has been filed aggrieved by the order passed by the Principal Sessions Judge, Thanjavur in CrIRCNo.31 of 2016, reversing the order passed by the learned Judicial Magistrate-II, Thanjavur made in CrMP No.3867 of 2016.

2.The petitioner as an accused is facing trial in CC No.109 of 2011, for the offence under Sections 409, 465, 468, 471, 477A and 420 of IPC r/w 120(b) of IPC.

3.The case of the prosecution is that the petitioner was working as a cashier in the Panchayat Union, Thanjavur and during that period, he had misappropriated certain amounts by preparing false documents and by forging the signature of the official
After filing of the final report, the prosecution had examined all the witnesses. At this stage an application came to



be filed by the prosecution under Section 311 of CrPC in order to mark a statement dated 01.06.1999, which is said to have been made by the petitioner to one K. Govindarajan. According to the prosecution the petitioner had admitted the commission of the offence in the statement that is said to be given by him to the said Govindarajan, who was the Commissioner of Panchayat Union, Thanjavur and one Venkatraman had signed the statement as a witness. This Govindarajan was examined by the Investigating Officer. However, he died. Therefore, the prosecution wanted to recall the said Venkatraman [PW.5] to mark the statement made by the petitioner admitting the commission of the offence.

4. The trial Court dismissed the application by an order dated 15.07.2016. However, the appellate Court had allowed the criminal revision filed by the prosecution and set aside the order passed by the trial Court.

5. The main point that arises for consideration is with regard to the nature of the order passed under Section 311 of CrPC. It is now settled law that the order passed under Section 311 of CrPC is in the nature of an interlocutory order. Therefore, a revision is not maintainable as against such an order, in view of the bar contained under Section 397(2) of the Code of Criminal Procedure. This position has been consistently followed by various High Court including our Court. It will be useful to refer to the following judgments in that regard:

a. Dwaraka Dass Vs. State of Himachal Pradesh, reported in 1980 Cr1.LJ 1018.

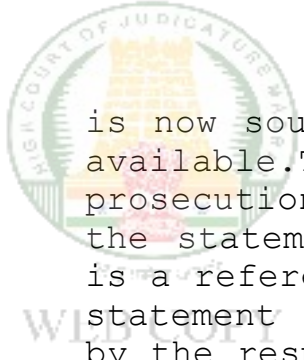
b. Sanjai Vs. State of Haryana, reported in 2005 Cr1.LJ. 287.

c. T. Stanes and Company Limited Vs. MG. Mohamed Iqbal, reported in 2007 Cr1.LJ. 4100.

6. In view of the above settled law, the Principle Sessions Judge, Thanjavur ought not to have entertained the criminal revision filed by the prosecution against the dismissal of the application under Section 311 of CrPC. The order of the Principal Sessions Judge, Thanjavur is liable to be set aside on this ground alone.

7. Even otherwise, it can be seen that the said Venkatraman, who was said to be the witness to the statement given by the petitioner, was examined by the prosecution on 10.11.2011 and no documents were marked through him, even though the document which

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



is now sought to be relied upon by the prosecution was very much available. The document that is sought to be relied upon by the prosecution is said to be a self-incriminatory document, which is the statement given by the petitioner accepting the guilt. There is a reference to this statement dated 01.06.1999, both in the 161 statement recorded from Govindaraj and also in the FIR registered by the respondent Police. However, this document did not form part of the final report filed by the respondent Police. If really this document was available, the respondent Police would have filed it along with the final report or at least would have attempted to mark the said document, when Venkatraman was examined as a witness. The prosecution never attempted to do that. After a period of nearly five years, in the year 2016, the prosecution has filed an application to recall the said Venkatraman and mark the above said statement dated 01.06.1999. This clearly amounts to filling up the lacuna by the prosecution. An application under Section 311 of CrPC can never be entertained, where the Court finds that the prosecution wants to fill up the lacuna. Therefore, even on merits, this Court is of the considered view that the application filed by the prosecution to recall PW.5 and to mark the alleged statement given by the petitioner has no merits.

8. In fine, this Criminal Original petition is allowed and the order passed by the Principal Sessions Judge, Thanjavur in CrI RC No. 31 of 2016 is hereby set aside. Consequently, CrI MP (MD) No. 6812 of 2018 is closed.

9. There shall be direction to the learned Judicial Magistrate -II, Thanjavur to complete the proceedings in CC No. 109 of 2011 within a period three months and report compliance of the same to the Registry, immediately after completion of the proceedings.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Principal District and Sessions Judge,
Thanjavur.

2. The Judicial Magistrate -II,
Thanjavur.



3.The Inspector of Police,
District Crime Branch,
Thanjavur.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.M.KARUNANITHI, ADVOCATE IN SR NO.87779

DSK

BU/PM/SAR-III:30.10.2018 : 4P/6C

order made in
Cr1OP(MD)No.15427 of 2018
27.09.2018