

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3137 of 2019
and Crl.M.P.No.2036 of 2019

M.Badrinarayanan

... Petitioner

Vs.

1.Anandan
2.State by
Inspector of Police,
Traffic Investigation,
D-6, Anna Square Police Station,
Chennai - 600 005

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.3672 of 2018 in C.C.No.1926 of 2012 on 04.01.2019 by the Hon'ble VI Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.C.A.Theagarajan

For RR1 : Mr.Chellaiah, Senior Counsel for
Mr.A.Mohammed Sadiq

For RR2 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to challenge the order passed in Crl.M.P.No.3672 of 2018 in C.C.No.1926 of 2012 dated 04.01.2019 on the file of the learned VI Metropolitan Magistrate, Egmore, Chennai thereby dismissing the petition filed under Section 311 Cr.P.C. seeking reopening the prosecution case by permitting the prosecution to mark certain documents.

2. Mr.C.A.Theagarajan, the learned counsel for the petitioner would submit that the petitioner is the complainant. On 27.07.2011, the brother of the petitioner died in a road accident. On enquiry he found that a speeding car proceeding from south to north on Kamaraj Salai suddenly took a right turn into the beach and hit his brother who was

proceeding from North to South on Kamarajar Salai in his motorcycle. Therefore he sustained injuries and died. Thereafter, the offending vehicle was seized and filed charge sheet as against the first respondent accused in C.C.No.1926 of 2012. The prosecution examined 15 witnesses. The petitioner could not mark some documents which were misplaced from the case diary during examination of witnesses. Therefore, the second respondent filed a petition under Section 254(2) r/w 311 Cr.P.C. in CrI.M.P.No.2362 of 2018 and the same was allowed by the trial court and four documents were marked. Again, the second respondent traced another five vehicle documents and filed another petition to reopen and to mark the said documents. The trial court without considering the said documents dismissed the petition on the ground that no plausible explanation or sufficient reason for the delay was given in filing the petition. Therefore he prayed to set aside the order.

3. Per contra, Mr.Chellaiah, Senior Counsel appearing for Mr.A.Mohamed Sadiq, the learned counsel for the first respondent filed counter and submitted that the petition under Section 254 (2) r/w 311 Cr.P.C. is filed by the second respondent on behalf of the State to mark certain papers which are claimed to be important documents. But the Inspector of Police representing the State has not filed any affidavit in the said petition. As such the petitioner has no locus to file this petition when he did not file any petition before the trial court. Further the State cannot be represented by the petitioner herein or replaced by him. He further submitted that the petition filed by the second respondent is nothing but repetition of the earlier petition and they want to mark document, i.e. notice under the Motor Vehicle Act sent by the Investigation Officer to PW10, car owner returned undelivered and acknowledgments are there as without seals of the post offices. The delay in filing this petition was not explained by the petitioner that too the delay is seven years. There is absolutely no reason to believe that no documents which were not marked by the prosecution at the time of marking documents which were allowed to be marked by the earlier recall petition. He further submitted that the case is posted for arguments and at this point, it could not be allowed to mark those documents and the trial court has rightly dismissed the petition and it warrants no interference by this Court.

4. The learned Senior Counsel further submitted that this Calendar case was dragged by the prosecution from the year 2011 and though this Court directed the trial court on

two occasions to dispose of the case in expeditious manner, the trial court could not conclude the trial since the petitioner keep on filing petition and petition. The petitioner is none other than the brother of the deceased and he signed in the observation register as a witness along with one Uma Shankar, a clerk of Mr.Thiagarajan, Advocate for the intervenor and uncle of the deceased. Both of them are not witnesses to the alleged occurrence. Further he submitted that from the evidence of PW2 to PW4, there is no categorical evidence to prove the occurrence. Further he submitted that the earlier petition was allowed and the investigation officer was put in the witness box as the cover stated to be undelivered and returned was already opened cover. Now, the prosecution filed this petition to mark the already torn or opened covers. Therefore, the trial court has rightly dismissed the petition and does not warrant any interference.

5. Heard Mr.C.A.Theagarajan, learned counsel for the petitioner and Mr.Chellaiah, Senior Counsel appearing for Mr.A.Mohammed Sadiq for the first respondent and Mr.M.Mohamed Riyaz, Additional Public Prosecutor for the second respondent.

6. This petition has been filed as against the order of dismissing the petition filed under Section 311 Cr.P.C. to mark the following documents:

S.No	Date	Description of Documents	Remarks
1	27.08.2011	Notice sent to Juliet Dola rose carbon copy	Carbon Copy
2	27.08.2011	Notice sent to Juliet Dola Rose with acknowledgement (returned)	Postal Cover with acknowledgement returned unserved
3	27.08.2011	Postal Receipt	Original
4		Acknowledgement Card	Original
5	07.09.2011	Notice sent to Juliet Dola Rose	Postal Cover with Acknowledgement returned unserved

7. The petitioner is the brother of the deceased. He was already permitted to participate in the conduct of the criminal proceedings and he is also permitted to file appropriate application at the appropriate stage before the trial court to examine and cross examine all the prosecution witnesses in the manner known to law by this Court in CrI.R.C.No.840 of 2013 by order dated 03.09.2013. Therefore,

the petitioner has locus standi to file this petition before this Court as against the order passed by the trial court thereby rejecting the petition filed by the prosecution to mark the above said documents.

8. The next question is whether the trial court is right in dismissing the petition filed under Section 254(2) r/w 311 Cr.P.C. It is seen that it is a case of the year 2012 and the prosecution so far examined PW1 to PW14. Thereafter Section 313 of Cr.P.C. questioning is also over and the defence side endorsed that no witnesses and the matter is posted for arguments. At this stage, the petition was filed by the prosecution to recall PW15 namely the Investigation Officer to mark the above said documents. It is also seen that already the trial court permitted the prosecution in CrI.M.P.No.2362 of 2018 to mark certain documents. Accordingly these documents were marked through witnesses. After a period of seven years, again the prosecution filed the petition to mark certain documents without stating any reason to mark certain documents. The documents which are intended to be marked by the prosecution are of the year 2011. In fact, those documents are very much available with the prosecution even at the time of initiation of proceedings. It is also curious to note that those documents are not at all helpful for the prosecution since those documents are nothing but notice issued under the Motor Vehicle Act by the investigation officer and the returned cover with acknowledgements. Further it is also seen that this Court already directed the trial court to avoid unnecessary delay and directed to dispose of the matter as expeditiously as possible. Therefore, the trial court rightly dismissed the petition and it warrants no interference by this Court. Accordingly this Court is not inclined to allow this Criminal Original Petition.

9. However, considering the facts and circumstances of the case, the trial court is directed to complete the trial process in C.C.No.1926 of 2012 within a period of three months from the date of receipt of a copy of this Order.

10. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Hon'ble VI Metropolitan Magistrate,
Chennai

2. Inspector of Police,
Traffic Investigation,
D-6, Anna Square Police Station, Egmore
Chennai - 600 005

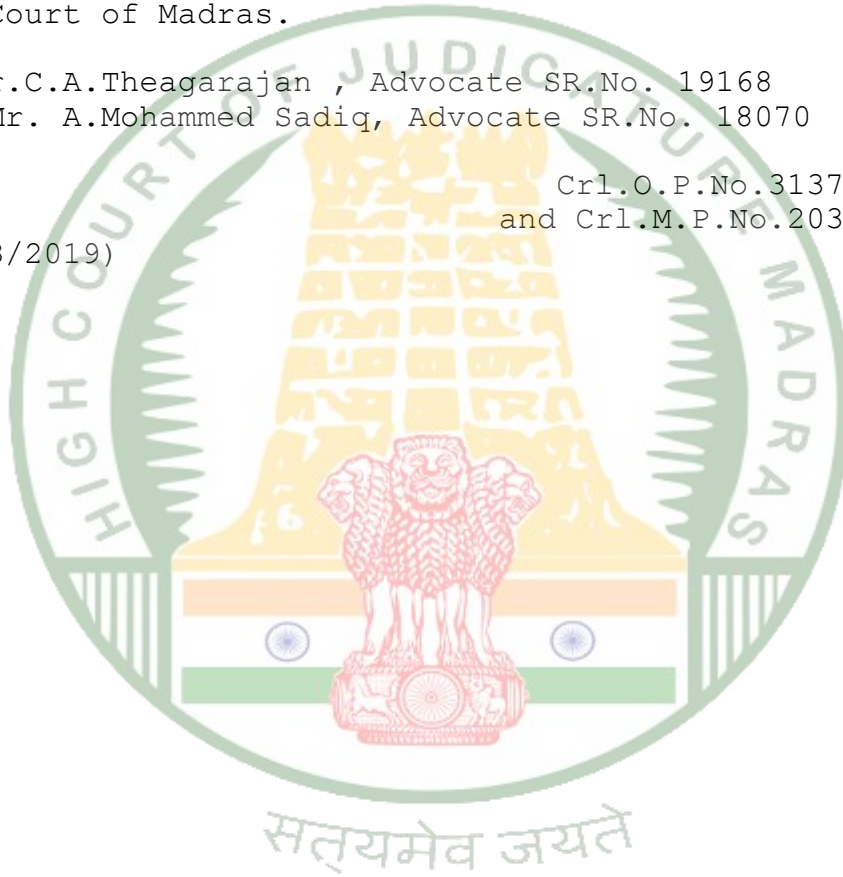
3. The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.A.Theagarajan , Advocate SR.No. 19168

+2ccs to Mr. A.Mohammed Sadiq, Advocate SR.No. 18070

CrI.O.P.No.3137 of 2019
and CrI.M.P.No.2036 of 2019

A.SK(15/03/2019)



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