

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.No. 6422 of 2015

and

M.P.No.1 of 2015

1.Chinnapaiyan

2.Vadivelu

3.Kamala

4.Pushpavalli ...Petitioners/Respondents/Accused 1 to 4

Vs.

The Inspector of Police,
Deevattipatty Police Station,
Salem District. ...Respondent/Petitioner/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 22.01.2015 made in C.M.P.No.97 of 214 in S.C.No.301 of 2012 on the file of the II Additional Sessions Judge at Salem, by allowing this Criminal Original Petition.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Mr.C.Raghavan
Government Advocate

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below allowing the application filed under Section 311 of Cr.P.C. by the prosecution, to examine a Doctor as an additional witnesses, on the ground that he had made the entry in the accident register, while the deceased was brought to G.M.K.M.C Hospital, Salem.

2. The petitioner is facing trial before the Court below for an offence under Section 341 and 302 of I.P.C. The prosecution examined various witnesses and they were also cross-examined by the petitioner. The case was at the stage of final arguments. At that point of time, a petition was filed by the prosecution for recalling four witnesses and marking certain

documents. The said petition was allowed in C.M.P.No.50 of 2014 and same became the subject matter of challenging before this Court in Crl.O.P.No.24342 of 2014. This Court, after examining the entire materials, modified the order passed by the Court below and directed the evidence to be re-opened for examination of Dr.R.Ashok, Consultant Emergency Physician, Manipal Hospital, Salem to speak about the accident register and other related aspects.

3. Pursuant to the orders passed by this Court, Dr.Ashok was re-called and the accident register and the wound certificate were marked as Ex.P18 and P19. The said Doctor was also cross-examined in detail by the petitioner.

4. Thereafter, the prosecution has again filed a petition under Section 311 of Cr.P.C to examine Dr.Kumar , as an additional witness who is said to have made entry in the accident register, when the deceased was brought to G.M.K.M.C. Hospital, Chennai. This petition was opposed by the petitioner on the ground that the prosecution is trying to fill up the lacuna and the proceedings are unnecessarily dragged by filing one petition after another.

5. The Court below, considering the materials available on record, and the facts and circumstances of the case, was pleased to allow the petition. Aggrieved by the same, the present petition has been filed before this Court.

6. The learned counsel for the petitioner submitted that this is a clear attempt to fill up the lacuna, by the prosecution and the prosecution cannot be permitted to file repeated petitions under Section 311 of Cr.P.C, and to examine witnesses whose name is not even found in the list of witnesses in the final report. The learned counsel further submitted that this Court had already made it clear, while passing the earlier order, that the prosecution should examine Dr.Ashok, for the purpose of marking the accident register and wound certificate, and now the prosecution cannot be allowed to again call one more witness.

7. The learned Government Advocate submitted that the Court below has properly appreciated the entire materials and the Court below has given a categorical finding that the examination of Dr.Kumar, is necessary for coming to a just decision in the case. The learned counsel submitted that there are absolutely no grounds to interfere with the order passed by the Court below.

8. This Court has carefully considered the submissions made on either side and also the materials available on record.

9. It can be seen that the prosecution filed a petition under Section 311 of Cr.P.C on an earlier occasion for examining certain additional witnesses and to mark certain documents. This Court has recorded the names of the witnesses whom the prosecution wanted to examine and the relevant portion is extracted here under:

" 3. Thereafter, the Additional Public Prosecution filed memo dated 11.07.2014 for recalling the following four witnesses: (i) Indarani/PW1 (ii) Investigating Officer; and (iii) Dr.P.Kumar, Casualty Medical Officer, G.H, Salem; and (iv) Dr.R.Ashok, Consultant Emergency Physician, Manipal Hospital, Salem-12."

10. From the above list, it is clear that the name of Dr.Kumar is also mentioned in the list of witnesses.

11. This Court, after considering the entire facts, restricted the examination of the witnesses and directed the re-opening of the evidence only for examination of Dr.R.Ashok and insofar as the other witnesses are concerned, this Court had modified the order passed by the Court below. While that being so, the prosecution cannot be again permitted to call Dr.Kumar as a witness. Granting such permission will virtually amount to reviewing the earlier order passed by this Court.

12. The Court below, did not take into consideration the earlier order passed by this Court, while considering the application filed by the prosecution to examine Dr.Kumar. In view of the same, the order of the Court below suffers from illegality and the same has to be interfered by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

13. In the result, the order passed by the Court below in C.M.P.No.97 of 2014 dated 22.01.2015 is hereby quashed. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in S.C.No.301 of 2001 within a period of two months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

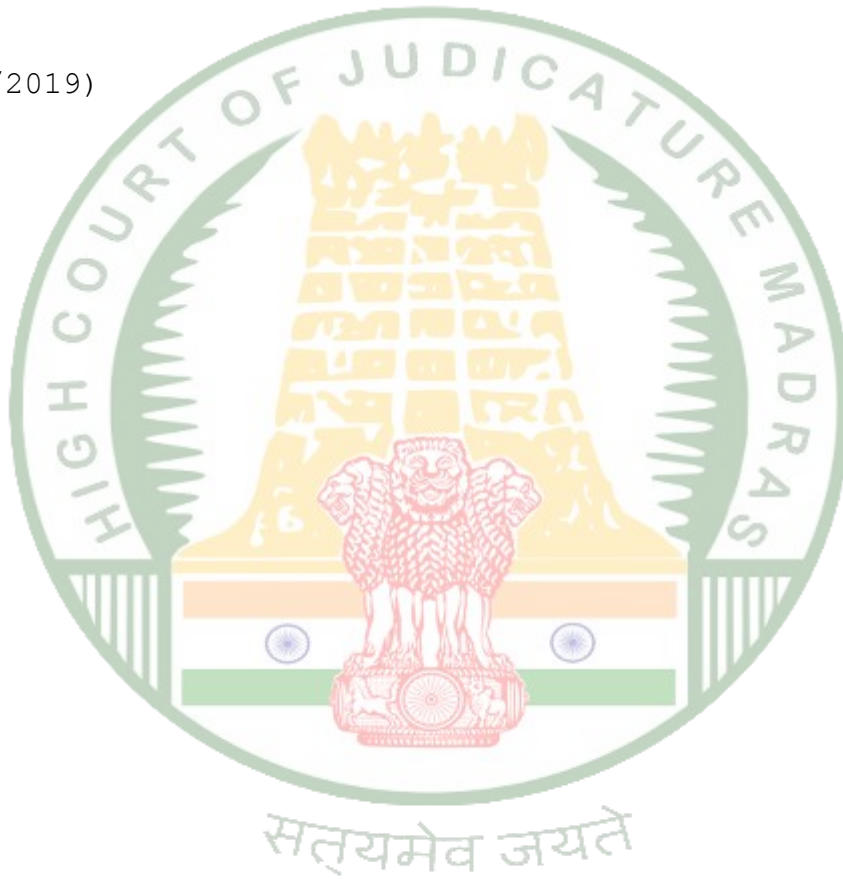
ssb

To
The Inspector of Police,
Deevattipatty Police Station,
Salem District.

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.No.46061

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and
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NA (CO)
GMY (27/06/2019)



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