

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2019

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.2388 of 2019  
and  
CrI.M.P.No.1557 of 2019

Mani

... Petitioner

Vs.

The State of Tamilnadu,  
represented by The Station House Officer,  
Vikravandi Police Station,  
Villupuram District.  
(Crime No.876 of 2011)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.M.P.No.329 of 2018 in S.C.No.92 of 2012 on the file of the Principal Assistant Sessions Judge, Villupuram set aside the same.

For Petitioner : Mr.M.Devaraj  
For Respondent : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner seeking for further investigation.

2.It is seen from records that the respondent police have filed a final report before the Court below as against thirteen accused persons for an offence under Sections 147, 148, 294 (b), 323, 324 506(ii) and 307 of IPC r/w Section 149 IPC.

3.The petitioner, who was the defacto complainant was examined as P.W.1. According to the petitioner, certain important documents which ought to have been made as part of the investigation, was not filed in the final report. It came to light only at the time of trial. Therefore, in order to bring those materials on record, the petitioner had sought for a further investigation by filing a petition under Section 173(8) Cr.P.C.

4.The Court below dismissed the petition and held that the Court below can take into consideration these materials and alter the charges in exercise of its power under Section 216 of Cr.P.C and also add accused persons in exercise of its power under Section 319 Cr.P.C.

5.The learned counsel for the petitioner submitted that the present petition was filed only due to the fact that the Hospital records which are vital documents for the purpose of proving the case of the prosecution, was not properly collected and filed along with the final report. Only to bring these hospital records as part of the case records, the petitioner had proceeded to file a petition seeking for further investigation.

6.This Court does not find any illegality or infirmity in the order passed by the Court below. A Full Bench of this Court after taking note of the judgment of the Honourable Supreme Court in 2017 (2) MLJ CrL 45 (SC) held in Chinnathambi @ Subramani Vs. State Rep. by the Inspector of Police, Vellakovil Police Station, Tirupur District reported in 2017 (2) CTC 241, that further investigation can be ordered after the cognizance is taken only on request made by the investigating agency and not at the instance of any one else or suo motu.

7.The grievance of the petitioner is that certain hospital records which are very vital to prove the case of the prosecution needs to be marked in the course of trial. For this purpose, it is not necessary to conduct a further investigation. The prosecution can always file a petition under Section 311 Cr.P.C and mark these documents through P.W.1. Of course opportunity must be given to the accused persons by furnishing a copy of these records and giving them an opportunity to cross examine the witnesses. This will serve the purpose.

8.This Criminal Original Petition is disposed of with a direction to the respondent police to file an application under Section 311 Cr.P.C seek permission of this Court below to mark the documents, which are available with the defacto complainant. The Court below shall consider the same and proceed further in accordance with law and the Court below shall also give sufficient opportunity to the accused persons. Consequently, the connected CrL.M.P.No.1557 of 2019 is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

vsg1/ia

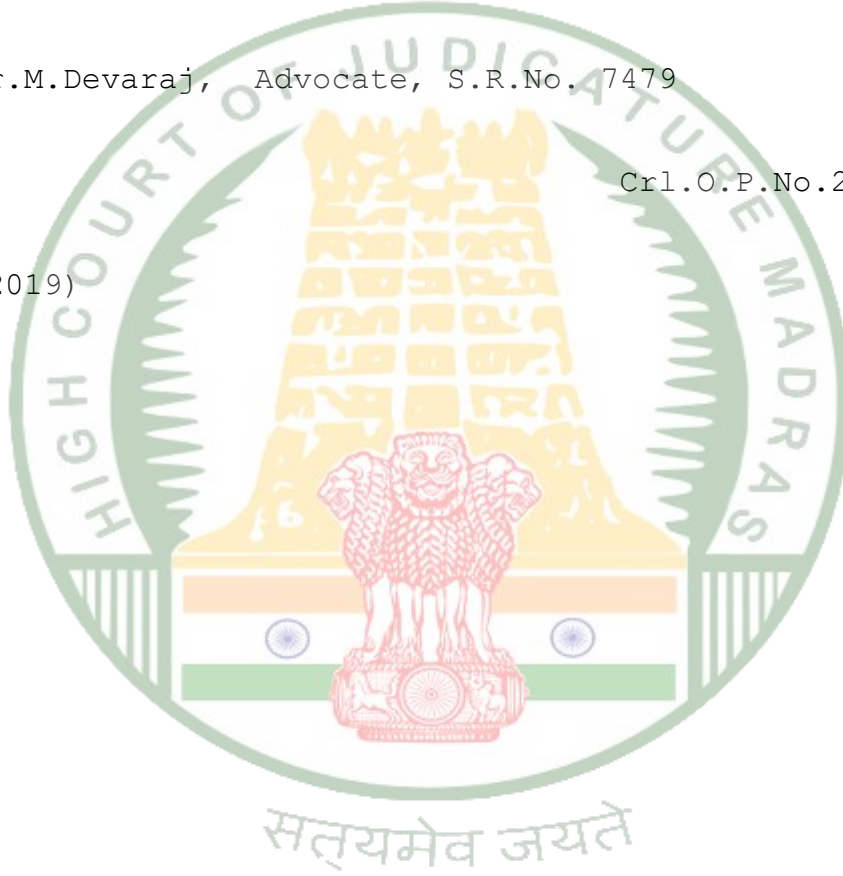
To:

- 1.The Principal Assistant Sessions Judge,  
Villupuram.
- 2.The Station House Officer,  
Vikravandi Police Station,  
Villupuram District.
- 3.The Public Prosecutor,  
Madras High Court,  
Madras.

+1cc to Mr.M.Devaraj, Advocate, S.R.No. 7479

Cr1.O.P.No.2388 of 2019

PM(CO)  
GN(28/02/2019)



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