

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **17.06.2019**

CORAM

THE HONOURABLE Mr.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.15442 of 2019
and Crl.M.P.No.7579 of 2019

Muniyappan

.. Petitioner

Vs.

1. State Rep. By Deputy
Inspector of Police,
Thevoor Police Station,
Sankagiri, Salem District.
Crime No.220 of 2014.

2. Muniappan
3. Sellappan
4. Kuppusamy
5. Duraisamy
6. Kamaraj
7. Duraisamy
8. Manivannan
9. Muniappan
10. Naga Kannan
11. Kandasamy
12. Mayil
13. Mathappan
14. Palanisamy
15. Thangamuthu
16. Kaveri

.. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Learned Assistant Sessions Judge, Sankagiri, Salem District in Crl.M.P.No.38 of 2018 in S.C.No.226 of 2016 dated

05.02.2019 and direct the Learned Assistant Sessions Judge, Sankagiri to permit the petitioner to assist the prosecution in conducting the case in S.C.No.226 of 2016.

For Petitioner : Mr.S.Parthasarathy

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 301 of Cr.P.C to conduct the prosecution.

2. It is seen from the records that the petitioner is the defacto complainant in Crime No.220 of 2014. There is yet another counter case in Crime No.219 of 2014 in which, the petitioner along with others are shown to be an accused persons. A final report was filed in both these cases and the same was taken on file in S.C.Nos. 226 and 234 of 2016. There was only one Public Prosecutor who was available to conduct the case and therefore, the petitioner filed the present application under Section 301 of Cr.P.C to permit him to conduct the prosecution.

3. Subsequent to the filing of the application, two independent Public Prosecutors have been appointed to conduct the prosecution in S.C.Nos.226 and 234 of 2016. The Court below dismissed the application on this ground and

aggrieved by the same the present petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the petitioner is entitled to assist the prosecution effectively by virtue of Section 301 & 302 of Cr.P.C. The learned counsel relied upon the Judgment in [***Babubhai vs. State of Gujarat & Others***] 2010 4 CTC 833 in order to substantiate his arguments.

5. The learned Additional Public Prosecutor submitted that in view of the fact that there are two independent Public Prosecutors appointed for conducting the prosecution in S.C.Nos.226 and 234 of 2016, there is no requirement for the petitioner to conduct the prosecution and at the best, the petitioner can be permitted to assist the prosecution.

6. It is a settled position of law that in a case involving a case and counter, both resulting in a final report, different Public Prosecutors will have to conduct the case and case in counter. It seems that initially, there was only one prosecutor who was available and therefore, the petitioner wanted to conduct the prosecution insofar as his case is concerned, being the defacto complainant.

7. The Court below has dismissed the petition on the ground that individual Public Prosecutors have been appointed for each case and therefore, there is no requirement for the petitioner to conduct the case.

8. Even in a case, where the Public Prosecutor is available to conduct the prosecution, the defacto complainant has now been given the right to effectively participate in the proceedings and assist the prosecutor. This right has been reiterated in various Judgements and the Judgement cited by the learned counsel for the petitioner is clearly on the point.

9. In view of the above, the order passed by the Court below is modified to the effect that the petitioner shall be permitted to effectively participate and assist the prosecution in S.C.Nos.226 and 234 of 2016 pending on the file of the Learned Additional Assistant Sessions Judge, Sankagiri, Salem District.

10. This Criminal Original Petition is disposed of, with a direction to the Court below to complete the proceedings in S.C.Nos.226 and 234 of 2016 on the file of the Learned Additional Assistant Session Judge, Sankagiri, Salem District, within a period of four months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
msrm/rka

To

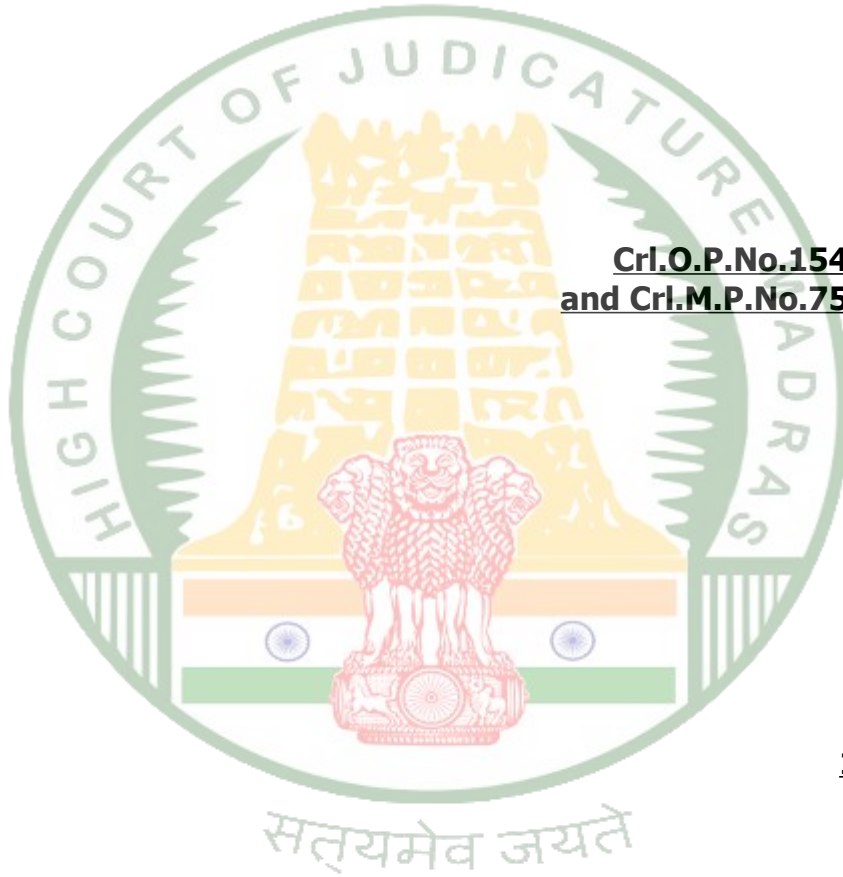
1. The Deputy Inspector of Police,
Thevoor Police Station,
Sankagiri, Salem District.
Crime No.220 of 2014.
2. The Learned Assistant Sessions Judge,
Sankagiri,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH,J

rka



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