



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.12742 of 2018

and

Crl.MP(MD)No.5827 of 2018

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Vaithi : Petitioner/3rd Party - PW1
Defacto Complainant

Vs.

1. State Represented by
The Inspector of Police,
Thuraiyur Police Station,
Trichy District.
(Crime No.343 of 2005) : Respondent/Petitioner/Complainant

2.Viswanathan

3.Veeramani : Respondents 2 & 3/Respondents 1 & 2
Accused Nos.1 & 2

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the record and set aside the order dated 03.04.2018 made in C.M.P.No.6363 of 2018 in C.C.No.260 of 2007 on the file of the learned Judicial Magistrate, Thuraiyur, Trichy District.

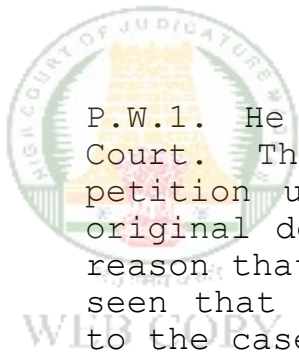
For Petitioner : Mr.B.Jameel Arasu
For R1 : Mr.R.Anandharaj
Additional Public Prosecutor
For R2 : Mr.D.Shanmugaraja Sethupathi

ORDER

This petition has been filed to challenging the order passed in C.M.P.No.6363 of 2018 in C.C.No.260 of 2007 on the file of the learned Judicial Magistrate, Thuraiyur, Trichy District.

2. Heard the learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the first respondent and learned counsel appearing for the second respondent.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is victim, who examined as P.W.1. On the complaint lodged by him, the first respondent registered a case in Crime No.343 of 2005 for the offence under Section 419 and 420 IPC and the same has been taken cognizance in C.C.No.260 of 2007. While being so, the petitioner did not obtain original document to prove the charges as against the accused persons. He was examined as



P.W.1. He also did not mark original document before the Trial Court. Therefore, on his instigation, the first respondent filed a petition under Section 311 of Cr.P.C., to re-call P.W.1 to mark original documents. But, the said application was rejected for the reason that for examining P.W.1, he failed mark the documents. It is seen that on perusal of the original documents which are relevant to the case of the prosecution as follows:-

"3.It is pertinent to mention that at the time of filing the charge sheet before the Court, the original documents I.e., (1) letter dated 21.08.1997 (2) letter dated 26.10.1997 and (3) Lab Test Report / P.W.1, dated 13.01.1998 and (5) another Lab Test Report of P.W.1 dated 21.07.1999 (6) another Lab Test Report were not sent along with the charge sheet to the Court. Only Xerox copies were kept along with the charge sheet."

4. The copies of those documents already annexed along with charge sheet. Since the copy of the documents cannot be mark before the Trial Court. Now, the petitioner wants to mark the original documents. Marking of these documents would not cause any prejudice to the accused persons, since the xerox copy of the documents already annexed along with the charge sheet. Under these circumstance, the order passed by the learned Magistrate is not sustainable. It is liable to be set aside.

5. Considering the above facts and circumstance, this Court feels that the petitioner may be given one more opportunity to put fourth his defence. Accordingly, the order dated 03.04.2018 passed by the learned Judicial Magistrate, Thuraiyur, Trichy District, in C.C.No.260 of 2007 is hereby set aside and the Trial Court is directed to fix the date to cross- examine P.W.1. and P.W.1 is permitted to mark the above said original documents subject to cross-examine. If the petitioner failed to mark the said documents on the date fixed by the Trial Court, the Trial Court is directed to proceed with trial in accordance with law.

6. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate, Thuraiyur,
Trichy District.

2. The Inspector of Police,
Thuraiyur Police Station,
Trichy District.

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

+1 CC to M/s.D,SHANMUGARAJA SETHUPATHI, Advocate SR-96790.

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