



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **16.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Cr1.O.P.[MD] No.18701 of 2019

WEB COPY

K.Shanthi : Petitioner
vs.

1.The Inspector of Police
K.Pudupatti Police Station,
Pudukkottai District.
In Crime No.27/2013. : 1st Respondent/Complainant

2.P.Ganapathy
3.S.Karthick
4.P.Chinnaraja
5.K.Vadivel
6.P.Selvaraj
7.S.Palaniyappan
8.R.Madhavan
9.V.Murugan : Respondents 2 to 9/Accused 1 to 8

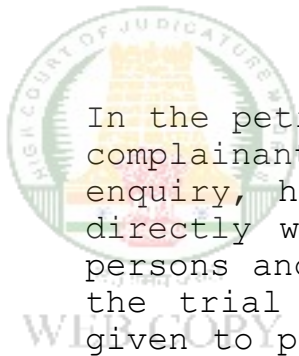
PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the order in Cr.M.P.No.245 of 2019 dated 29.11.2019 and set aside the same.

For Petitioner : Mr.R.Babu Jaganath
For Respondents : Mr.S.Chandrasekar,
Additional Public Prosecutor
(for R1)
Mr.C.M.Gunasekaran
(for R2 to R9)

O R D E R

This criminal original petition has been filed seeking to set aside the order passed in Cr.M.P.No.245 of 2019 in S.C.No.61 of 2014 dated 29.11.2019 on the file of the Additional District and Sessions Court, Pudukkottai.

2.The brief facts of the case are that the respondents 2 to 9 are the accused facing trial in S.C.No.61 of 2014 on the file of the Additional District and Sessions Court, Pudukkottai, for the offences under Sections 120(b), 341, 302 r/w 34 and 109 IPC. At the stage of questioning the accused under Section 313(1) of Cr.P.C., the petitioner/P.W.2, who is the wife of the deceased Kumar filed a petition under Section 311 Cr.P.C to examine additional witnesses.

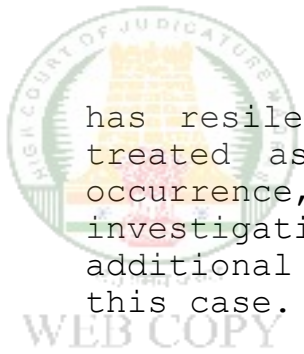


In the petition, it has been averred that one Padikasu, the de-facto complainant has been examined as P.W.1 and during the time of police enquiry, he had stated about the whole occurrence, as if, he had directly witnessed all the offensive overt act of all the accused persons and the cause of death of the victim Kumar. However, during the trial proceedings, he had resiled from the earlier statement given to police and that he had deposed differently other than what is stated to the police. Further, though other eye witnesses were available, the Investigation Officer had willfully excluded them in the charge sheet and that no proper investigation had been done with regard to the Cell Phone Nokia brand holding SIM card of Vodafone belonging to one Shanthi.

3.The respondents have filed separate counters. It has been contended that the petitioner had been examined as P.W.2 before the trial Court on 18.03.2017 and during her examination in chief before the Court, she had not stated anything about the grounds raised in the petition and that she has also not deposed as if 5 persons have witnessed the occurrence. Further, she has not deposed anything about the mobile phone or the SIM card belonging to Vodafone during her deposition in chief and thereby, the petition had been filed without any basis after 2-1/2 years of her examination in chief. Further, it was also stated in the counter that the case was registered during the year 2013 and that the final report was filed on 11.07.2017 and in the final report, nothing had been stated about the alleged 5 persons, who are stated to have witnessed the occurrence or that their statements were recorded. If the contention of the petitioner is true, she would have filed a petition seeking for further investigation before the concerned Court. Having not taken any action for the past 6 years, the petition at the stage of questioning under Section 313(1), was filed only to delay and protract the case.

4.The trial Judge, after hearing both sides, dismissed the petition stating that the petitioner/P.W.2 was examined 6 years, 8 months earlier and that she had been examined in chief on 18.03.2017 and that neither during the investigation nor during her examination in chief, she had deposed about the 5 persons who are alleged to have witnessed the occurrence. Further, the trial Judge finding that the five proposed witnesses are none other than her son, brother-in-law and relatives and also finding that P.W.2 had not stated about the presence of the witnesses before the Investigating Officer or before the trial Court on 18.03.2017, had dismissed the petition. Against which, the present petition has been filed.

5.The learned counsel for the petitioner would submit that P.W.1 who is the witness to the occurrence, had resiled from his earlier statement and he did not support the case of the prosecution. He would submit that though P.W.1 who is the witness to the occurrence, had supported the prosecution partly and had been



has resiled from the earlier statement and thereby, he had been treated as hostile and though five persons have witnessed the occurrence, the Investigating Officer did not conduct the investigation in a proper manner and that examination of the five additional witnesses is essential for arriving at a just decision of this case.

6.Per contra, the learned counsel appearing for the respondents 2 to 9/accused would submit that at no point of time, either during the investigation or during the examination in chief, neither the petitioner nor P.W.1 has spoken about the presence of the proposed additional witnesses or that they have witnessed the occurrence. He would submit that P.W.1 was examined in chief on 20.12.2016. He had not spoken about the presence of the so called additional witnesses and he had been recalled in cross examination on 25.07.2019 and he had resiled from his earlier statement. Further, the present petitioner was examined in chief on 18.03.2017. She had also not spoken about the presence of the alleged five persons, who are called as additional witnesses, and she has also not stated anything, as if the witnesses know about the occurrence or that they have witnessed the occurrence. Further, even during the investigation, they have not been examined as witnesses and they have not been cited as witnesses in the final report. If the said five persons have witnessed the occurrence and they have not been included as witnesses in the list, the petitioner would have a petition immediately for further investigation or she would have filed a protest petition alleging that they have been deleted in the case. Whereas, only after finding that there is no other materials against the petitioner, only in order to protract and delay the proceedings, the present petition has been filed at the stage of questioning under Section 313(1) Cr.P.C to cause harassment to the accused.

7.The learned Additional Public Prosecutor appearing for the first respondent police would submit that the Investigating Officer, by name, L.Manoharan had examined the witness P.W.1, who had accompanied the deceased at the time of occurrence. He has not spoken anything about the occurrence having been witnessed by the alleged five persons. Further, P.W.2 had been examined more than 5 times by the Investigating Officer and that at no point of time during the investigation, P.W.2 has spoken about the five persons having knowledge about the occurrence or having witnessed the occurrence. Further, she had been examined in chief on 18.03.2017 and at that time also she had not deposed anything about the occurrence having been witnessed by these five persons. She was cross examined on the same day. No allegations were made against the investigating agency as if the Investigating Officer has left out the five witnesses who are stated to have seen the occurrence. Further, Investigation was done in respect of the SIM card and the mobile phone and they do not disclose about the fact of the five witnesses who witnessed the occurrence. Neither the SIM card, nor



the cell phone details are relevant for this case and the trial Judge, finding that the petition has been filed only to protract the proceedings, had dismissed the petition.

8. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the respondents 2 to 9.

9. It is seen that P.W.1 is the person who stated to have accompanied the deceased victim at the time of occurrence. He had been examined by the respondent police. He had not stated anything as if the occurrence was witnessed either by other persons other than him. He was examined in chief before the trial court on 18.03.2017. On that date also, he has not spoken about the occurrence having been witnessed by any other persons other than him. Further, during cross examination, he has also resiled from his earlier statement. P.W.2 has been examined in chief on 18.03.2017. She has also not spoken about the additional witnesses having seen the occurrence or that they have been left out by the prosecution to be added as witnesses in the final report. Further, after final report has been filed on 11.07.2013, if it is true that the eyewitnesses have been left out, she would have filed the petition for further investigation even at that time, which has also not been done. Therefore, this Court is of the opinion that the petition is filed much belatedly only for the purpose of delaying the trial.

10. In view of the above, this Court does not find any infirmity in the order passed by the trial Judge. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (P&A)

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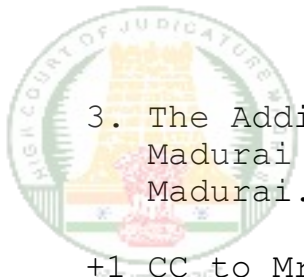
Sub Assistant Registrar (CS)

skn

To

1. The Additional District and Sessions Judge,
Pudukkottai

2. The Inspector of Police
K.Pudupatti Police Station,
Pudukkottai District.



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

+1 CC to Mr.M.KARTHIKEYAVENKATACHALAPATHY, Advocate (SR-105421[F]
dated 17/12/2019)

+1 CC to Mr.S.KARTHIKEYAN, Advocate (SR-105394[F] dated
17/12/2019)

**Crl.O.P. [MD] No.18701 of 2019
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