

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1641 of 2020

Dr.Salai Sundari

...Petitioner/
Defacto Complainant

Vs.

1.State Rep by
The Inspector of Police
W-28, Ambattur Police Station
Ambattur, Chennai -53.

2.Dr.P.L.Natarajan

3.Sigappi

...Respondents 2 & 3
Accused 1 & 2

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order dated 05.12.2019 made in C.M.P.No.927 of 2019 in C.C.No.362 of 2016 by the Hon'ble Judicial Magistrate Court, Ambattur by allowing the above Criminal Original Petition and consequently allow the C.M.P.No.927 of 2019 in C.C.No.362 of 2016 on the file of the Hon'ble Judicial Magistrate Court, Ambattur.

For Petitioner : Mr.V.Surya Sankar

For Respondents: Mr.S.Karthikeyan

Additional Public Prosecutor for R1
Mr.S.Radha Pandian for R2

O R D E R

The Criminal Original Petition has been filed to set aside the order dated 05.12.2019 made in C.M.P.No.927 of 2019 in C.C.No.362 of 2016 by the Hon'ble Judicial Magistrate Court, Ambattur, and consequently allow the C.M.P.No.927 of 2019 in C.C.No.362 of 2016 on the file of the Hon'ble Judicial Magistrate Court, Ambattur.

2.The learned counsel for the petitioner would submit that the 1st respondent herein had filed a C.M.P.No.927 of 2019 in C.C.No.362 of 2016 before the Judicial Magistrate, Ambattur, as there is a discrepancy between the complainant and the list of jewels and other items. The said doubt was not raised by the 2nd and 3rd respondent herein either before P.W.1 or P.W.3. But they raised their doubt during examination of P.W.5 and as such P.W.1 has to clarify this doubt, only by way of examination. Therefore, the prosecution, viz., the 1st respondent herein filed a petition under Section 311 of Cr.P.C., to recall the P.W.1, to clarify the doubts raised by the accused. Unfortunately, the trial Court dismissed the petition for the reason that the petition is nothing but, to fill up the lacunae.

3.Per contra, the learned counsel appearing for the 2nd and 3rd respondent would submit that P.W.1 has already examined in full and after examining the P.W.1, the prosecution has filed a petition under Section 311 of Cr.P.C., to recall the P.W.1. In the cross examination P.W.5 has stated that he is not able to clarify the statement of P.W.1 and as such now, the prosecution has filed a petition to recall and clarify the weight of the jewels. Thereby, the trial Court has dismissed the petition, with the reason, that the petition has been filed nothing but to fill up the lacunae. He would further submit that when the accused raised doubt about the quantum of jewels and money received from the P.W.1, it has to be necessarily clarified by P.W.1. Therefore, the prosecution after examining the Investigation Officer as P.W.5, filed a petition to recall the P.W.1. He further submitted that he may be given one more opportunity to re-examination of P.W.1.

4.Heard both sides.

5.It is seen that the case has registered for the offence under Section 498(A), 406 and 506 (i) of IPC in Crime No.4 of 2016. The P.W.1 was examined by the prosecution and thereafter the case was posted for arguments. At that stage, prosecution has filed a petition under Section 311 of Cr.P.C., to recall the witness P.W.1 to explain and clarify the doubts raised by the Investigating Officer, during her cross examination by 2nd and 3rd respondents herein. Admittedly, the P.W.1 was fully examined and thereafter the prosecution closed the witnesses and posted to arguments. There are contradiction between the statements of P.W.1 and P.W.5. Therefore, the prosecution has filed the petition to clarify the said doubts from P.W.1. Therefore the trial court has rightly dismissed the petition. Accordingly,

this Court also does not find any infirmity or irregularity in the order passed by the trial Court in C.M.P.No.927 of 2019 in C.C.No.362 of 2016 dated 05.12.2019.

6.Hence the Criminal Original Petition is dismissed. However, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

jer

To

1.The Judicial Magistrate
Ambattur.

2.The Inspector of Police
W-28, Ambattur Police Station
Ambattur, Chennai -53.

2.The Public Prosecutor
High Court of Madras.

Crl.O.P.No.1641 of 2020

mg (co)
aa03/11/2020

सत्यमेव जयते

WEB COPY