

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P No.33726 of 2019
and Crl.M.P.No.18609 of 2019

1. P. Venkatesh
2. R.Prakash
3. P. Vijayalakshmi

...Petitioners

Vs.

State represented by
The Inspector of Police,
Shevapet Police Station,
Salem - 636 002.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 15.10.2019 passed in C.M.P.No.3037 of 2019 in P.R.No.22 of 2019 on the file of the learned Judicial Magistrate, Additional Mahila Court, Salem, and to furnish the copy of the Diary Extracts allegedly written by the deceased and sent to the Court by the respondent police through Form 91 dated 05.01.2018 and 14.03.2018.

For Petitioner : Mr.S.Jeyakumar
For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The present Criminal Original Petition has been filed seeking a relief to set aside the order dated 15.10.2019 passed in C.M.P.No.3037 of 2019 in P.R.No.22 of 2019 on the file of the learned Judicial Magistrate, Additional Mahila Court, Salem, and to furnish the copy of the Diary Extracts allegedly written by the deceased and sent to the Court by the respondent police through Form 91 dated 05.01.2018 and 14.03.2018.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent police.

3. The petitioners have been arrayed as accused in P.R.No.22 of 2019 pending on the file of the learned Judicial

Magistrate, Additional Mahila Court, Salem. In the final report filed by the respondent police in Crime No.11 of 2018, the respondent police came to the positive conclusion that the petitioners herein have committed the offences under Sections 498(A) and 304(B) I.P.C and Section 4 of Dowry Prohibition Act.

4. During the pendency of the said proceedings, the petitioners filed an application before the learned Judicial Magistrate under Section 207 Cr.P.C. and prayed to direct the respondent to furnish the copy of the documents which recovered through Form 91 dated 05.01.2018 and 14.03.2018.

5. In the said application, the learned Judicial Magistrate, Additional Mahila Court, Salem, vide impugned order dated 15.10.2019, dismissed the prayer sought for by the petitioners by mentioning the reasons as follows:-

"The documents sought are diary (2 Nos.) which can be marked as material objects. Further those diaries were taken and remedied as case properties C.P.No.39/18 same can be appreciated during Trial. Now the petition is seeking the contents of the Diary which is subject matter of Trial. Further there cannot be two prayers for alternate relief which court be granted in Criminal Proceeding. Hence the petition does not fall with in the scope of Rule 339 Criminal rules of practice."

6. In the said circumstances, the learned counsel appearing for the petitioners, relying on a judgment of the Hon'ble Apex Court in Criminal Appeal No.1794 of 2019 in the case of P.Gopalkrishnan @ Dileep Vs. State of Kerala and Anr., made a submission that the petitioners being the accused, are entitled to receive all the copies of the documents which are relied on by the prosecution.

7. Now, on considering the same with the relevant judgment relied on by the learned counsel appearing for the petitioners, the Hon'ble Supreme Court has held as follows:-

"25.

"3. Interpretation clause.-

Document.- "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

32. It is crystal clear that all documents including "electronic record" produced for the inspection of the Court along with the police

report and which prosecution proposes to use against the accused must be furnished to the accused as per the mandate of Section 207 of the 1973 Code. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India."

8. In yet another judgment, the Hon'ble Supreme Court, in the case of Sidhartha Vanisht @ Mani Sharma Vs. State (NCT of Delhi), has held as under:-

"221. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially."

9. Therefore, considering the ratio laid down in the above-referred judgments herein also, this Court is of the view that the petitioners being the accused in the grave crime, are also entitled to receive the copies of the documents, which are all relied on by the prosecution for the purpose of proving the charges.

10. It is a clear case that the documents sought for by the petitioners are to be furnished to the petitioners which were recovered by the investigating agency through Form 91. Therefore, it cannot be construed as though those documents are irrelevant to decide the case of the prosecution. Further, after producing those documents before the Court, refusing to furnish the copies of those documents is against the principles of law already settled by the Hon'ble Supreme Court.

11. Therefore, in the light of the above discussions, the order passed by the learned Judicial Magistrate, Additional Mahila Court, Salem, dated 15.10.2019 in C.M.P.No.3037 of 2019 in P.R.No.22 of 2019 is set aside and the Criminal Original

Petition is allowed with a direction to the learned Judicial Magistrate to furnish the copies of the documents sought for, to the petitioners. Consequently, connected miscellaneous petition is closed

Sd/-

Assistant Registrar

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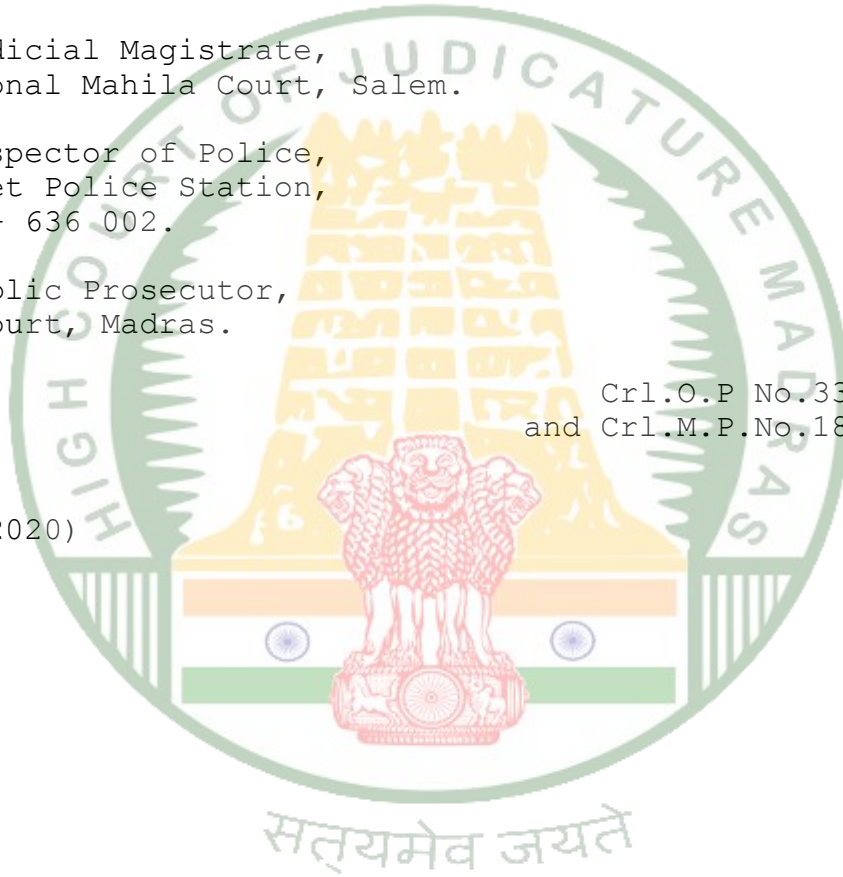
Sub Assistant Registrar

To

1. The Judicial Magistrate,
Additional Mahila Court, Salem.
2. The Inspector of Police,
Shevapet Police Station,
Salem - 636 002.
3. The Public Prosecutor,
High Court, Madras.

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