



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.O.P.(MD)No.11301 of 2020 and

CRL.M.P.(MD)No.5157 of 2020

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M.Hariharasudan

... Petitioner

Vs.

1. Karmegam

2. The Inspector of Police,
S.S.Colony police station, Madurai City,
Madurai.

... Respondents

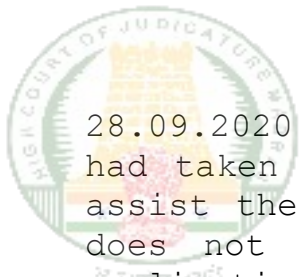
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to set aside the order dated 28.09.2020 made in Cr.M.P.No.317 of 2020 in S.C.No.254 of 2017 which was filed under Section 311 Cr.P.C. on the file of the learned Additional District Judge No.IV, Madurai and consequently, direct the second respondent to file appropriate application before the learned Additional District Judge No.IV, Madurai and allow the petition.

For Petitioner	: Mr.Veerakathiravan, Senior Counsel, for Mr.C.Jeganathan
For R-2	: Mr.V.Neelakandan, Additional Public Prosecutor.

O R D E R

Heard the learned Senior counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the second respondent.

2. The petitioner is the defacto complainant in S.C.No.254 of 2017 on the file of the IV Additional District and Sessions Judge, Madurai. The first respondent herein is figuring as an accused. It is stated that the evidence for the prosecution has been completed and the matter is posted for examination of the accused under Section 313 of Cr.P.C. At this stage, the defacto complainant, namely, the petitioner herein realized that some vital documents have been omitted to be marked. He therefore, filed Cr.M.P.No.317 of 2020 under Section 311 of Cr.P.C. for recalling himself and marking the petition mentioned documents which are nothing but court documents. The said recall petition was dismissed by order dated



28.09.2020 on the ground of maintainability. The learned trial Judge had taken the view that the petitioner had only been permitted to assist the prosecution under Section 301(2) of Cr.P.C. and that it does not authorise the petitioner to independently take out an application for recall under Section 311 of Cr.P.C. Questioning the same, this criminal original petition has been filed.

3. The learned Senior counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds and placed reliance on the decisions reported in (2013) 16 SCC 173 (*Mina Lalita Barua V. State of Orissa*) and (2020) 2 SCC 474 (*Rekha Murarka V. State of W.B.*).

4. Before I could consider the contentions of the learned Senior counsel, the learned Additional Public Prosecutor appearing for the second respondent submitted that the second respondent himself would file an application for recall through their Additional Public Prosecutor. The learned Additional Public Prosecutor further states that such an application will be filed by the second respondent in the next hearing. The Court below shall immediately number the same and dispose of it in accordance with law. Let me clarify that the first respondent will be entitled to cross-examine the witnesses after he is recalled. In view of the stand taken by the learned Additional Public Prosecutor, there is nothing to interfere with the order impugned in this criminal original petition.

5. This criminal original petition stands disposed of in the aforesaid terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The IV Additional District Judge,
Madurai.

WEB COPY

2. The Inspector of Police,
S.S.Colony police station, Madurai City,
Madurai.

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

+1 CC to M/s.C. JEGANATHAN, Advocate (SR-20275[F] dated
16/10/2020)

Cr1.O.P.(MD)No.11301 of 2020
15.10.2020

CK(CO)

TR(03.11.2020) 3P 5C