

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP No.4025 of 2021
and Crl MP No.2469 of 2021

1. Selvaraj
2. Prabhu
3. Suresh
4. Kamaraj
5. Selvaraj
6. Mathialagan
7. Pachaimuthu
8. Gandhi
9. Veppanthattai ...Petitioners/A1 to A4, A6 to A9/Respondents

vs.

The Deputy Superintendent of Police,
Perambalur Division,
Perambalur
(Crime No.261 of 2015 on the file of
Arumbavur Police Station) ... Respondent/Petitioner

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crl. MP. No.11 of 2021 in Spl. SC No.5 of 2017 on the file of Special Court for SC/ST (POA) Perambalur, and set aside the same.

For Petitioners: Mr. K.Selvarangan
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below allowing the application filed by the prosecution under Section 311 read with 91 of the Code of Criminal Procedure, to mark the proceedings of the Superintendent of Police, Perambalur District, dated 22.09.2019 authorising P.W.17 to investigate the case.

2. The petitioners are facing trial before the Court below for an offence under Sections 147, 294(b), 506(ii), 435 IPC r/w

3(2)(v) of SC/ST (POA) 1989, and 3 of PPD Act @ 147, 148, 447, 427, 294(b), 506(ii) , 435 IPC r/w 3(2) (v) of SC/ST Act 1989 and 3 of P.P.D.L. Act. The prosecution had examined P.W.1 to P.W.17 and the trial was at the verge of completion. P.W.17, who is the Investigation Officer was cross-examined in detail and certain answers have been elicited from him in the Course of the cross-examination. It is stated that he made a very specific statement in the cross-examination that he received an authorisation through email. This document was not marked when he was examined on the side of the prosecution. This document was also not filed along with the Final Report.

3. On the verge of the completion of the trial, the present application came to be filed by the prosecution to recall P.W.17 and to mark the proceedings of the Superintendent of Police, Perambalur District, authorising P.W.17 to investigate the case. This application was allowed by the Court below mainly on the ground that no prejudice will be caused to the petitioners and that the petitioners will have sufficient opportunity to cross-examine the witness on the document that is sought to be marked. Aggrieved by this order, the present petition has been filed before this Court.

4. Heard Mr.K.Selvarangan, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

5. A Careful perusal of the deposition of P.W.17, who was the investigating officer in this case shows that he has been sufficiently questioned with regard to the authorisation to investigate the case, in the course of cross-examination and certain definite answers have been elicited from P.W.17. The grievance of the petitioners is that the prosecution is trying to fill up the lacuna by introducing a document which was neither filed along with the Final Report nor was it marked at the time when P.W.17 was examined in chief.

6. In the considered view of this Court, even if a document has not been filed along with the Final Report, the same can always be marked in the course of examination of the witness by furnishing a copy of the same to the accused and with the permission of the Court. The power under Section 311 of the Code of Criminal Procedure has been interpreted very widely and the law on this issue is also well settled. Useful reference can be made to the judgment of this Court in K.Ravichandran Vs. The Inspector of Police, TMCH Police Station, reported in 2018 (2) LW CrI 944 and Jeyaseelan and Ors. Vs. The State, reported in 2019 (4) MLJ CrI 274. The Court below has exercised its discretion under Section 311 of the Code of Criminal Procedure and permitted recall of P.W.17 for the purpose of marking the

proceedings of Superintendent of Police, Perambalur District. By merely marking this document, it is not going to efface the earlier deposition that was given by P.W.17 in this case. The petitioner can always cross-examine P.W.17 with regard to the document that is sought to be marked and if required even contradict with the earlier statement that was made by P.W.17 in the course of cross-examination. Therefore, the petitioners will have sufficient opportunity to cross-examine the witness on the document sought to be marked and as rightly held by the Court below no prejudice will be caused to the petitioners, if P.W.17 is recalled for marking the relevant document.

7. In view of the above, this Court is not inclined to interfere with the order passed by the Court below and the same is sustained. The Court below is directed to give sufficient opportunity to the petitioners to cross-examine P.W.17, after he is recalled and the relevant document is marked.

8. This Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

jv

To

1. The Special Court for SC/ST (POA)
Perambalur.
2. The Deputy Superintendent of Police,
Perambalur Division,
Perambalur.
3. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1 CC to Mr.K.Selvarangan, Advocate sr 13334

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SRI (CO)
SP(08/03/2021)