

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8053 of 2021
and
Crl.M.P.No.5298 of 2021

MANIKANDAN

... Petitioner/Accused

Vs.

State rep. by its
The Inspector of Police
KOMARAPALAYAM Police Station
Namakkal District
(Crime No.516 of 2017)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set-aside the order dated 02.03.2021 made in Crl.M.P.No.439 of 2021 in C.C.No.128 of 2020, on the file of learned Judicial Magistrate, Komarapalayam.

For Petitioner : Mr.W.Camyles Gandhi
For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R
(Through Video Conferencing)

The petitioner is the accused in C.C.No.128 of 2020 has filed this petition seeking to set-aside the order dated 02.03.2021 made in Crl.M.P.No.439 of 2021, passed by the file of learned Judicial Magistrate, Komarapalayam.

2.The case of the prosecution is that on 21.09.2017 the defacto complainant who was travelled in the petitioner's auto along with some other passengers towards Komarapalayam to Edapadi Road and in view of rash and negligent driving of the petitioner, an accident had occurred. In the said accident the deceased one Gowthaman got severely injured and thereby succumbed to death and thereafter, the father of the deceased gave a complaint against the petitioner. The case was registered in FIR No.516 of 2017 and the learned Judicial Magistrate, Tiruchengode take cognizance and duly issued summons to the petitioner and the case is numbered as C.C.No.128 of 2020.

CrI.M.P.No.439 of 2021 had filed under Section 311 Cr.P.C., by the respondent police to relief of examination of Additional Eye Witness cum injured person. P.W.7 is the injured eye witness in this case who had stated about his wife and mother along with him on the date of occurrence was travelled in the petitioner's auto and they had also sustained injuries. Hence, the present petition has been filed to examine P.W.7's wife and mother viz., Sathya and Rajammal as an additional evidences. The lower Court was permitted to cross examine the additional witnesses of the said Sathya and Rajammal against which, the present petition has been filed.

3.The contention of the petitioner is that during the investigation, there is nothing has been mentioned about on the date of occurrence the presence of the said Sathya and Rajammal along with P.W.7 was travelled in the petitioner's auto. The petition has been filed with a motive of dragging the proceedings and in order to protract the proceedings and to harass the petitioner. P.W.7 is of no use to fill up the lacuna and to get conviction against the accused at the instance of the defacto complainant these two persons have been projected as an eye witnesses to the occurrence and the lower Court cannot allow the respondent police to fill up the latches and to implicate the petitioner with a motive.

4.The learned Additional Public Prosecutor submits that P.W.7 is an injured eye witness who categorically states that his wife and mother was present at the time of occurrence and they have also got injured and they were also shown some relevant documents to prove that they got injured and took treatment. The petitioner's apprehension is unfounded for the simple reason is that by exclaiming P.W.7's wife and mother as additional evidences they would be subjected to cross examination by the petitioner, hence his right could not be denied. Further placing reliance on the Rajendra Prasad vs. Narcotic Cell Through its Officer incharge, Delhi in Appeal (CrI.) 621 of 1999. Wherein, the Apex Court had clearly held that there is no question of filling up lacuna in a criminal case, and the accused has given opportunity to clarify the same.

5.In view of the above, this Court finds no merit in this case. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition also stands dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssi

To

1.The Judicial Magistrate,
Komarapalayam.

2.-do-Through The Chief Judicial Magistrate,
Namakkal.

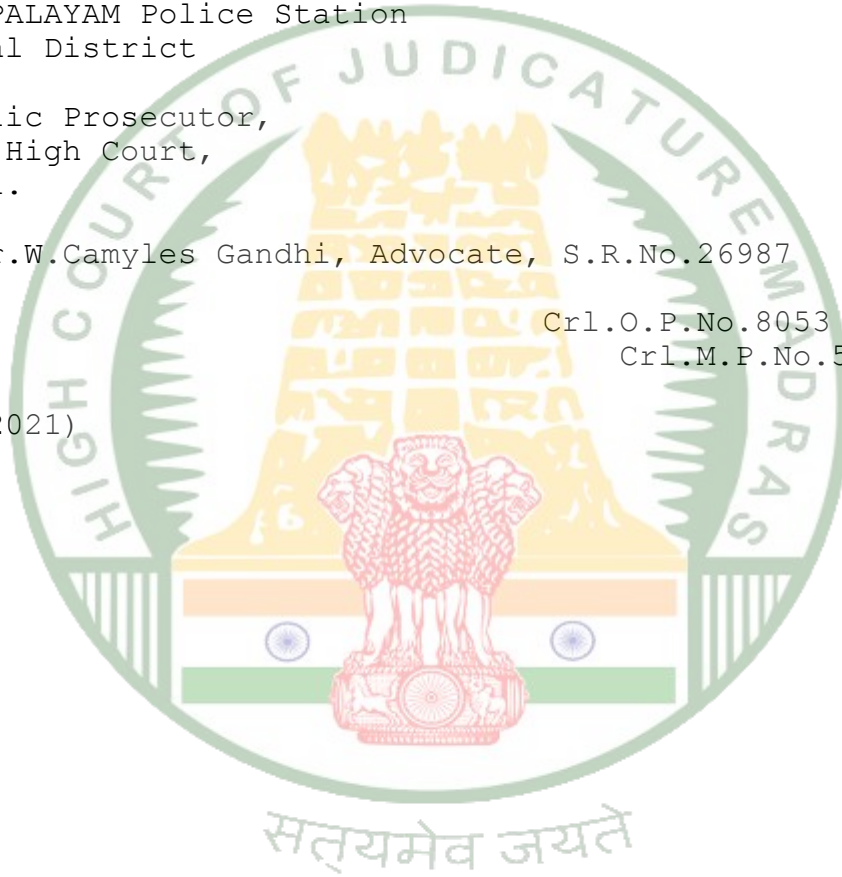
3.The Inspector of Police
KOMARAPALAYAM Police Station
Namakkal District

4.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.26987

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CrI.M.P.No.5298 of 2021

UM(CO)
CB(12/07/2021)



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