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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19681 of 2021
and Crl.M.P.No.10731 of 2021

1.Balakrishnan
2.Bambayee

... Petitioners

Vs.

State rep. by
The Inspector of Police,
Varanjaram Police Station,
Varanjaram,
Kallakurichi District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records culminating in Crl.M.P.No.171 of 2020 in S.C.No.358 of 2010, partly allowed by the Principal Sub Ordinate Judge, Kallakurichi in order dated 07.09.2021, set aside the same.

For Petitioners : Mr.A.P.Balaji

For Respondent : Mr.R.Vinothraja
Government Advocate [Crl.Side]

O R D E R

This Criminal Original Petition is filed to call for the records culminating in Crl.M.P.No.171 of 2020 in S.C.No.358 of 2010, partly allowed by the Principal Sub Ordinate Judge, Kallakurichi in order dated 07.09.2021, set aside the same.

2.The petitioners are accused in S.C.No.358 of 2010 for offence under Section 306 IPC had filed this Criminal Original Petition.

3.The contention of the petitioners is that the respondent/prosecution had filed a petition under Section 311 Cr.P.C. before the trial Court seeking to examine the Judicial Magistrate No.II, Puducherry viz., Mr.Gokulakrishnan, B.A.,



B.L., and the Investigating Officer/Inspector of Police, Varanjaram Police Station, since Murali, Inspector of Police is not well and bedridden and unable to give evidence. The Judicial Magistrate name not listed in the list of witnesses. The petitioners/accused objection is that though the trial court dismissed the petition with regard to examining the alternative witness ie. The Inspector of Police, Varanjaram Police Station, Kallakurichi Circle, as regards the Judicial Magistrate No.II, Puducherry allowed the petition.

4.His grievance is that with regard to the dying declaration none of the witness has spoken about the same in their 161 statements or in their evidence, more particularly, PW1 to PW3 i.e. the mother, father and the brother of the victim are silent about the dying declaration. The copy of the dying declaration not furnished, as a relied on document. The Doctors who examined the victim at Government Hospital Kallakurichi and Puducherry not examined and cited by the respondent police in the charge sheet. In view of the same, the petitioners apprehension is that, dying declaring is a fabricated document, if it is permitted to be marked it would amount to fill up the lacuna, cause prejudice to the defence of the petitioners/accused.

5.The learned Government Advocate [Crl.Side] submits that the Judicial Magistrate No.II, Puducherry, who recorded the dying declaration of the victim, the respondent police by oversight, not listed his name in the list of witness. The dying declaration is very much available in the case diary and mentioned as documents in the Primary Case Index. It is by mistake the copy of the dying declaration not furnished earlier. He further submitted that the Lower Court perused the case diary, court records found, mention of documents and its availability and given a detailed order and hence sought dismissal of the above petition.

6.He further submitted that examining the Judicial Magistrate No.II, Puducherry and marking of the dying declaration is only beneficial to the trial court and it would no way cause any prejudice to the petitioners. On the other hand it is helpful for the trial court to arrive at a just decision.

7.Considering the submissions and on perusal of the materials, it is seen that the lower court, perused the case diary found dying declaration recorded by the Judicial Magistrate No.II, Puducherry, available. Further the dying declaration particulars are found in the Primary Case Index of the final report. In view of the same, this Court finds that the order of the lower court not to be interfered with, the



lower court order is a well reasoned one, no prejudice would be caused to the petitioners, by examining the Judicial Magistrate No.II, Puducherry as a witness in this case. Further the lower Court observation is that the procedural violation, contradictions can be put to the Judicial Magistrate will be helpful for the accused. This Court directs the respondent police to furnish the copy of the dying declaration to the petitioners well before the examination of the Judicial Magistrate No.II, Puducherry, who recorded the said dying declaration, so that the petitioners/accused can prepare their defence and be ready for the cross examination.

In view of the above, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sub Ordinate Judge,
Kallakurichi.
- 2.The Inspector of Police,
Varanjaram Police Station,
Varanjaram,
Kallakurichi District.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.A.P.Balaji, Advocate Sr No.55597

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VSNII (CO)
PR (16/11/2021)