

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
PRONOUNCED ON : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.6013 OF 2021

Ganesan @ Military Ganesan ... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
CBCID, Namakkal,
Cr.No.310/2020. ... Respondent

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside order passed in Crl.M.P.No.152/2021 dated 12.02.2021 in S.C.No.69/2012 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to set aside the order, dated 12.02.2021 in Crl.M.P.No.152 of 2021 in S.C.No.69 of 2012 passed by the learned Sessions Judge (Fast Track Mahila Court), Namakkal (Trial Court).

2.The petitioner filed a petition under Section 91 Cr.P.C., before the trial Court in Crl.M.P.No.152 of 2021 in S.C.No.69 of 2012 to issue summons to send the following documents:-

1. 55 Register (Receive Register) for the period 01.08.2010 to 31.08.2010 maintained at the Judicial Magistrate, Tiruchengode containing the Serial No.2160, dated 30.08.2010 and Serial No.2183, dated 31.08.2010.

2. Requisition given by the Sub Inspector of Police, Pallipalayam Police Station for conducting Postmortem of deceased Velu @ Velusamy, son of Chandran, Door No.12B, Kannimar Koil Street, Near Panchayat Elementary School, Agraharam, Pallipalayam in connection with Pallipalayam Police Station F.I.R.No.310/2010 U/s.147, 148, 302, 506(2) IPC on 10/11.03.2010.
3. Brought dead register maintained by Erode District, Government Head Quarters Hospital, for the month of March 2010 regarding the entry of Death of Velu @ Velusamy, son of Chandran, Door No.12B, Kannimar Koil Street, Near Panchayat Elementary School, Agraharam, Pallipalayam in connection with Pallipalayam Police Station F.I.R.No.310/2010 U/s.147, 148, 302, 506(2) IPC on 10/11.03.2010.
4. Medico Legal Case register maintained by Erode District, Government Head Quarters Hospital, for the month of March 2010 regarding the entry of Death of Velu @ Velusamy, son of Chandran, Door No.12B, Kannimar Koil Street, Near Panchayat Elementary School, Agraharam, Pallipalayam in connection with Pallipalayam Police Station F.I.R.No.310/2010 U/s.147, 148, 302, 506(2) IPC on 10/11.03.2010.

3. The trial Court, by order, dated 12.02.2021, dismissed the above petition, against which, the present Criminal Original Petition is filed.

4. The learned counsel for the petitioner submitted that the petitioner filed a Copy Application for the 1st document before the learned Judicial Magistrate, Tiruchengode in C.A.No.224 of 2020 on 21.12.2020. The said Court returned the same for the reason that the register mentioned in the copy application is confidential. The petitioner sought for document Nos.2 to 4 from the Government Head Quarters Hospital, Erode under the Right to Information Act, 2005 on 27.07.2020. The Public Information Officer, Government Head Quarters Hospital, Erode forwarded the request of the petitioner to the father of the deceased Velu @ Velusamy on 02.09.2020. The Public Information Officer, Government Head Quarters Hospital, Erode, by communication, dated 04.12.2020 informed the petitioner to approach the Court and obtain necessary orders, since the particulars sought for pertains to Medico Legal Cases. He further submitted that unless the documents are produced, the petitioner will not be in a position to put forth his defence effectively and great prejudice would be caused. Hence, he prayed for setting aside the order of the trial Court, dated 12.02.2021.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner failed to give reason to summon the above said documents. In this case, the trial has been kept pending for the past several years due to filing of several Miscellaneous Petitions by the accused one after another, in a concerted manner. Now, the case is at the stage of arguments. At this stage, summoning fresh documents without any reason, would serve no purpose and it would only further protract the trial. He further submitted that the register maintained (1st document) in the trial Court would not be useful for the petitioner to defend his case. Likewise, the other documents such as the requisition of the Sub Inspector of Police, Pallipalayam Police Station for conducting postmortem; the brought dead register maintained by the Government Head Quarters Hospital, Erode and the Medico Legal cases register would no way strengthen the case of the petitioner. The requisition for conducting postmortem on the deceased was marked as Ex.P18. Originally, the requisition was made by the Inspector of Police, Pallipalayam Police Station and not by the Sub Inspector of Police. One Veerasamy, Head Constable produced the said requisition to the Doctor to conduct postmortem.

6.The learned Additional Public Prosecutor further submitted that one Mr.Kesavaramsingh, Sub Inspector of Police, Pallipalayam Police Station registered the FIR (Ex.P27), forwarded the same to the higher officials and also to the concerned Court. Now, the Sub Inspector of Police and the Head Constable are not alive. Taking advantage of the same, the petitioner filed petition under Section 91 Cr.P.C., before the trial Court. The trial Court, by order, dated 12.02.2021 rightly dismissed the petition by considering all aspects of the case. Hence, he prayed for dismissal of this Criminal Original Petition.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that the complaint (Ex.P1) of Jambu @ Shanmughasundaram was received by Mr.Kesavaramsingh, Sub Inspector of Police, Pallipalayam Police Station on 10.03.2010. After receipt of the complaint, he registered the FIR (Ex.P27) in Crime No.310 of 2010 and informed the same to PW29, the Circle Inspector of Police. The case of the prosecution is that PW1 came to the Police Station and lodged the complaint (Ex.P1) against A1 and A7 that on 17.04.2009, A7 took the victim to the building of A1 at Pallipalayam, Agraharam on the pretext that a Cinema Director has come to Erode for interview. Thereafter, she was raped by A1 and A7, which was videographed by A1 through his mobile phone and published in the social media. In this

case, the deceased Velu @ Velusamy being a Branch Secretary of the Communist party, gave support and confidence to the victim and her family member to lodge the complaint. Enraged over the same, on 10.03.2010, at about 10.45 p.m., in front of Sengunthar Om Kaliyamman Temple, Raja Veethi in Pallipalayam Town, the accused formed themselves into unlawful assembly with a common object to cause death of Velu @ Velusamy and attacked him with metal dagger and deadly weapons and committed the murder, which was witnessed by Jambu @ Shanmughasundaram, Ravi, Sridhar and others. The FIR was registered by Mr.Kesavaramsingh, Sub Inspector of Police, Pallipalayam Police Station at late hours (at 11.50 p.m.) on 10.03.2010. Thereafter, the Investigating Officer (PW29) took up the investigation, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, conducted inquest on the body of the deceased and sent the body to the Government Head Quarters Hospital, Erode for postmortem.

9.On perusal of requisition for conducting postmortem (Ex.P18), it is seen that the FIR was registered at about 23.50 hours on 10.03.2010 and the requisition narrated the entire sequence of the case. Ex.P18 is signed by PW29, which is dated 11.03.2010. The evidence of PW29 is that after receiving information about the incident, he reached the scene of occurrence at about 00.30 hours on 11.03.2010. The requisition (Ex.P18) received by the postmortem Doctor at about 09.45 a.m., on 11.03.2010, as could be seen from the endorsement made by him. Further, in Ex.P18, there is an endorsement of Doctor at about 09.45 a.m., and 10.15 a.m on 11.03.2010. In the postmortem certificate issued by the Doctor Mr.P.Balasubramani, Assistant Surgeon, Government Head Quarters Hospital, Erode, it is recorded that the postmortem commenced at about 10.30 a.m., on 11.03.2010. The postmortem Doctor (PW24) has stated in his evidence that on the requisition of the Sub Inspector of Police, Pallipalayam Police Station, he conducted postmortem on the body of the deceased. From the requisition letter (Ex.P18), it is seen that the request for conducting postmortem is made by PW29 and the same was confirmed by him. The apprehension of the petitioner is that the seal found in the requisition letter (Ex.P18) and the date of postmortem are contradictory and hence, the said two documents have been created after PW29 relieved from the case as Investigating Officer.

10.The postmortem Doctor (PW24) acknowledged the receipt of requisition letter (Ex.P18) on 11.03.2010, which is a contemporaneous one. The petitioner attempts to project a case that when inquest held between 12.00 a.m., to 4.00 a.m., and how in requisition letter, the Court seal is dated 30.08.2010. In such situation, the entries in the documents would show that the body of the deceased came later to the hospital and not as

projected by the prosecution.

11.In this case, the deceased was murdered by the accused on the late night hours on 10.03.2010, which is not in dispute. On receipt of the information, PW29 reached the scene of occurrence, conducted investigation in presence of witnesses. During trial, PW29 was cross examined in detail by the accused and thereafter, again he was recalled and cross examined with regard to omissions and contradictions. During cross examination, on the side of the defence, nowhere the documents Exs.P1, P18 and P27 were disputed. The delay in signing the documents might be for various reasons and all the documents contained date and time of receipt with seal. The contradiction between intersee witnesses would not give a right for the petitioner to summon the above said documents. More so, the petitioner has filed the petition before the trial Court with considerable delay at the end of trial.

12.In view of the same, this Court does not find any merit in this Criminal Original Petition and the order, dated 12.02.2021, made in CrI.M.P.No.152 of 2021 in S.C.No.69 of 2012 is confirmed. Accordingly, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Court of Sessions (Fast Track Mahila) Judge,
Namakkal.
2. The Inspector of Police,
CBCID, Namakkal.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sheik Ismail, Advocate, S.R.No.2164

CrI.O.P.No.6013 of 2021

SMI(CO)
PM/25/01/2022