



CrI.OP.No.27741 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.O.P.No.27741 of 2022

and

CrI.M.P.No.17044 of 2022

1. Akhtar Hussain
2. Shaju Begum
3. Nazir Hussain
4. Jabir Hussain

... Petitioners

/vs/

The State, represented by
The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai-14.

... Respondents

Prayer : The Criminal Original Petition has been filed under Section 482 Cr.P.C. to set aside the order passed in CrI.M.P.No.12156 of 2022 dated 06.10.2022 in C.C.No.2594 of 2017 on the file of the Court of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners ... Mr. S. Sheik Ismail

For Respondent ... Mr. S. Santhosh
Govt. Advocate (crl.side)



CrI.OP.No.27741 of 2022

ORDER

This Criminal Original Petition has been filed to set aside the order passed in CrI.M.P.No.12156 of 2022 dated 06.10.2022 in C.C.No.2594 of 2017 on the file of the Court of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel for the petitioner submitted that the petitioners are accused in C.C.No.2594 of 2017 on the file of XVIII Metropolitan Magistrate Court, Saidapet, Chennai. Based upon the complaint given by one Sabihabanu, a case has been registered against the petitioners in Cr.No.11 of 2016 and after investigation, the case was charge sheeted in C.C.No.2594 of 2017 for the offences punishable under sections 498-A and 506 IPC. In the said calender case, after examination of prosecution witnesses, during the defence stage, the investigation officer filed an application in CrI.M.P.No.2284 of 2020 before the learned Metropolitan Magistrate to further examine the PW1 and the same was allowed; subsequently based on the examination of the defacto complainant in chief, additional documents were collected from the defacto complainant/PW1 and the same were marked as Ex.P.7 to 25.



Crl.OP.No.27741 of 2022

WEB COPY

3. The learned counsel for the petitioners further submitted that though the investigation officer, who had laid the final report was already examined as PW6, the then investigating officer has not investigated the case further and apart from that, there is no records to show that she had conducted further investigation with the permission of the Court; further the copies of the documents were also not given to the petitioners for the purpose of cross examination. In these circumstances, Crl.M.P.No.2284 of 2020 filed by the prosecution seeking further examination of PW1 was allowed; aggrieved over the same, the petitioners herein filed an application in Crl.M.P.No.12156 of 2022 seeking permission to examine the present Investigation Officer of the respondent police for the purpose of cross examination pertaining to the documents filed by her which were collected from the complainant after the defence side evidence was closed. The learned trial judge erroneously dismissed the application filed by the petitioners on the ground that the application was filed intentionally in order to drag the proceedings.

4. It is the contention of the learned counsel for the petitioner that



Crl.OP.No.27741 of 2022

though the investigation officer who laid the final report was examined as PW6, the petition seeking further examination of PW1 was filed by a different investigation officer, it is just and necessary to examine the respondent in order to establish the probable defence. Thus he pleaded to set aside the impugned order and permit the petitioners to cross examine the Investigation Officer pertaining to the documents filed by her.

5. The learned Government Advocate (crl.side) submitted that before the trial court, the case is posted for arguments.

6. Heard both sides and perused the documents and materials available on record.

7. On perusal of the records, it would reveal that the petitioners are accused in C.C.No.2594 of 2017 on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai. The respondent police prosecuted the petitioners for having committed the offences punishable under sections 498A and 406 IPC. In this case, seven witnesses were cited by the prosecution and they were examined and the case is posted for



CrI.OP.No.27741 of 2022

defence side evidence.

WEB COPY

8. At this stage, new investigation officer, who took charge of the respondent police station approached the court and filed petition under section 311 Cr.PC., in CrI.M.P.No.2284 of 2020 to mark the documents given by the defacto complainant which were not produced during the course of investigation. That petition was allowed by the learned Metropolitan Magistrate. A perusal of paragraph 2 of the petition filed u/s.311 Cr.P.C., by the prosecution itself would show that the defacto complainant had given a representation to the investigation officer stating that certain vital documents which she have not given during the course of investigation due to inadvertence in her possession and those documents would be very much required to prove the case of the prosecution. It is seen that on receiving her representation, the investigation officer without seeking permission of the Court for conducting further investigation, straight away filed application under section 311 of Cr.P.C. and filed the documents given by the defacto complainant which is totally unsustainable. The learned Magistrate received it and marked the documents as Ex.P.7 to



Crl.OP.No.27741 of 2022

Ex.P.25. Under these circumstances, denial of the petitioner 's case for cross examining the investigation officer who had filed those documents will prejudice the accused seriously. Therefore, the order passed by the learned Magistrate is unsustainable and is liable to be set aside. Accordingly, the impugned order passed in Crl.M.P.No.12156 of 2022 dated 06.10.2022 is hereby setaside.

9. This Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

14.11.2022

Index : Yes/No

Internet : Yes/No

msr

To

1.The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai-14.

2.The Public Prosecutor,
High Court, Madras.

Note: Issue copy on 15.11.2022



WEB COPY



CrI.OP.No.27741 of 2022

V.SIVAGNANAM ,J.

msr

CrI.O.P.No.27741 of 2022
and
CrI.M.P.No.17044 of 2022

26.10.2022