



Crl.O.P.No.5090 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5090 of 2023 and
Crl.M.P.No.3202 of 2023

1.Mani

2.Arumugam

... Petitioners

Vs.

The State Rep. by
Sub-Inspector of Policewp
Edappadi Police Station,
Salem District

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 13.12.2022 passed by the learned Judicial Magistrate No.2, Sankari, passed in C.M.P.No.2371 of 2022 in C.C.No.35 of 2021.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 13.12.2022 passed by the learned Judicial Magistrate No.2, Sankari,



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passed in C.M.P.No.2371 of 2022 in C.C.No.35 of 2021.

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2.It is the submission of the learned counsel for the petitioner that prosecution filed petition under Section 311 Cr.P.C. to examine present Sub-Inspector, Sankari Police station as additional witness as an exhibit. The reason is that the complaint was omitted to be marked through investigation officer Mr.K.Vadivel. Not only that the defacto-complainant was dead and therefore he could not be examined. The learned Judicial Magistrate No.II, Sankari, allowed the petition. Challenging the order allowing the recall petition under Section 311 Cr.P.C., this petition is filed. It is the submission of learned counsel for petitioner that petition under Section 311 Cr.P.C. is filed only for filling up lacuna, that too after a long delay of four years. That cannot be permitted.

3.The learned Government Advocate (Criminal side) submitted that P.W.7, K.Vadivel is suffering from illness and he cannot attend the Court and therefore the complaint is sought to be marked through present Sub-Inspector, Sankari.

4.This Court is of the view that mainly because there is a four years of



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delay, prosecution cannot be denied the opportunity of marking the complaint.

The reason is that the complaint is the one which sets the law in motion in this case and that is primary evidence in this case. Probably because of death of defacto-complainant, the complaint could not be marked at the earliest point of time. When P.W.7, the investigation officer K.Vadivel was examined, by inadvertent, complaint was omitted to be marked. Only if the complaint is marked through P.W.7, the accused would be in a position to question him with regard to the registration of the First Information Report. Therefore, this Court directs the prosecution to make all endeavors to recall P.W.7 and examine him for the purpose of marking the complaint. If it is really not possible, then they can mark the complaint through the present Sub-Inspector of Police. Thus, this Court finds there is no illegality or irregularity in allowing Section 311 petition in Crl.M.P.No.2371 of 2022. In this view of the matter, order dated 13.12.2022 in C.M.P.No.2371 of 2022 in C.C.No.35 of 2021 passed by the learned Judicial Magistrate No.2, Sankari, is confirmed.

5.Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

16.03.2023



Internet: Yes

Index: Yes/No

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To:

1.Sub-Inspector of Police
Edappadi Police Station,
Salem District.

2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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