



Crl.O.P.No.16026 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16026 of 2023

and

Crl.M.P.No.10102 of 2023

1. Mani

2. Arumugam

.. Petitioners

Vs.

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

.. Respondent

Prayer: This Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records and Expunge the evidence of P.W.7, Vadivelu recorded on 12.06.2023 with regard to the marking of Ex.P5 to 8 in C.C.No.35 of 2021 on the file of the learned Judicial Magistrate No.II, Sankari, Salem District.



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For Petitioners : Mr.K.Mahendran
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This petition has been filed seeking to expunge the evidence of PW7 that was recorded on 12.06.2023 by the Court below with respect to marking of Ex.P5 to P8 in C.C.No.35 of 2021.

2. Heard Mr.K.Mahendran, learned counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The prosecution filed a petition under Section 311 of Cr.PC to examine PW7 and to mark the complaint through him. This petition was allowed by the Court below while passing orders in CMP No.2371 of 2022 dated 13.12.2022. This order became a subject matter of challenge before this Court in Crl. OP No.5090 of 2023. This Court dismissed the petition by an order dated



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16.03.2023 and the relevant portion in the order is extracted

hereunder :-

Therefore, this Court directs the prosecution to make all endeavors to recall PW-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 MP No.2371 of 2022. In this view of the matter, order dated 13.12.2022 in C.M.P.No.2371 of 2022 in CC.No.35 of 2021 passed by the learned Judicial Magistrate No.2, Sankari is confirmed.

4. Pursuant to the above order, PW7 was put in the witness box and apart from the complaint which was marked as Ex.P4, four



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more documents were marked as Ex.P5 to P8. The grievance of the petitioners is that these documents were not part of the final report and PW7 was examined to mark only the complaint and whereas, five additional documents came to be marked and the Court below had also entertained the same. Aggrieved by the marking of Ex.P5 to Ex.P8, the present petition has been filed before this Court.

6. The application under Section 311 of Cr.PC was filed by the prosecution to examine PW7 only for the purpose of marking the complaint. When that being so, four additional documents have been marked through PW7 and that goes against the very purpose of calling PW7 and those documents also did not form part of the final report. If really the prosecution wanted those four documents to be brought in during the course of trial, they should have filed a separate petition under Section 311 of Cr.Pc and should have put the accused person on notice. Without doing so, the four



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documents cannot be marked adverse to the interest of the accused persons. The Court below should not have taken on file the four documents that were marked through PW7 and the Court below ought to have insisted for filing a separate application under Section 311 of Cr.PC if really those four documents are essential to prove the case of the prosecution. Ultimately, the accused persons must know the materials that are put against them during the course of trial and they cannot be taken by surprise by suddenly bringing in new materials. Such practice does not auger well for a fair trial which is guaranteed under Article 21 of the Constitution of India.

7. In the light of the above discussion, Ex.P5 to P8 that was marked by the Court below shall stand set aside and the evidence that was spoken to by PW7 regarding these documents shall also stand eschewed. The evidence of PW7 shall confine itself only to the complaint which was marked as Ex.P4.



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8. It is made clear that if the prosecution wants to bring in four additional documents in order to substantiate their case, a separate application must be filed under Section 311 of Cr.PC and the petitioners / accused persons should be put on notice and thereafter, the Court below should take a decision on the same. Except giving this clarity, the marking of Ex.P5 to P8 through PW7, cannot be countenanced.

9. In the result, this Criminal Original Petition is allowed to the extent stated supra. Consequently, the connected miscellaneous petition is closed.

19.07.2023

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Index :Yes/No
Internet:Yes
Speaking Order/Non-speaking Order

To
1. The Sub-Inspector of Police,

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Edappadi Police Station,
Salem District.

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2. The learned Judicial Magistrate No.II, Sankari, Salem.
3. The Public Prosecutor,
Madras High Court, Chennai.

N.ANAND VENKATESH,J.

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