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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.2794 of 2024

R.Loganathan

...Petitioner

Vs.

State Rep. by
The Inspector of Police,
Sooramangalam Police Station,
Salem City.
(Crime No.156 of 2015)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to aside the order passed by the learned II Additional District and Sessions Judge, Salem in Crl.M.P.No.337 of 2023 in SC.No.359 of 2016 dated 03.01.2024.

For Petitioner : Mr.P.Aravindhan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This criminal original petition has been filed challenging the order passed by the Court below in Crl.M.P.No.337 of 2023, dated 03.01.2024, dismissing the application filed under Section 91 of Cr.P.C., wherein, the petitioner had sought for production of certain documents to establish his defence.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The petitioner is facing trial before the Court below for offence under Section 120(b), 449, 302 of IPC, 302 r/w 120(b) IPC, 201 r/w 302, 204 r/w 302 IPC. The petitioner has been arrayed as A1 in this case. The petitioner filed an application under Section 91 of Cr.P.C., in Crl.M.P.No.337 of 2023 to direct the production of the following documents:

DESCRIPTION OF DOCUMENTS AND AUTHORITY

*1.The Station House Officer,
Hemambika Nagar, Police Station,
Hemambika Nagar.
Palakkad 9.
Kerala State. To cause the production of the letter given by*



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PW10 Bharathi Raja. SI of Police, Suramangalam P.S. Now working as Sub Inspector of Police, Thiruppur District, Uthukuli P.S., dated 22.06.2015

*2.Sub Inspector of Police,
Hemambika Nagar, Police Station,
Issued acknowledgment of petition Hemambika Nagar Petition
No.98279/2015 dated 04.07.2015 at about 10.38.45 A.M. to
accused father one Rajendran*

4.The Court below on considering the rival claims, came to a conclusion that the copy of the documents that have been mentioned in the application is very much available with the petitioner and the petitioner can always mark those documents in order to prove his defence. In view of the same, the Court found that there was absolutely no necessity to summon the authorities, and accordingly, the application was dismissed. Aggrieved by the same, the present criminal original petition has been filed before this Court.

5.The learned counsel for the petitioner submitted that the petitioner is not in possession of both the documents and that these documents are very much required at the time of cross-examination of the Investigation Officer. The learned counsel submitted that the defence taken by the petitioner will be substantially established only if these two documents are summoned and it is put to the investigation officer at the time of cross-examination.



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6. In the considered view of this Court, the petitioner never took a stand before the Court below while filing the application under Section 91 of Cr.P.C., that he is not in possession of the above said two documents. Therefore, the Court below came to a conclusion that the petitioner is in possession of the copy of the above two documents and there is no need to summon those documents once again. This finding of the Court below cannot be faulted, since the petitioner never informed the Court below that he is not in the possession of the documents.

7. It must be borne in mind that whenever an order is tested by this Court, the materials that were placed before the Court below must be taken into consideration and certain new facts/materials that are placed before this Court cannot be a ground to interfere with the order passed by the Court below. This is for the simple reason that the Court below did not have an opportunity to consider those materials/facts which are now being projected before this Court.

8. The learned counsel for the petitioner submitted that the petitioner will now confine only to the production of the letter given by PW10 dated 22.06.2015 in order to establish his defence.



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9. Considering the facts and circumstances of the case and also the fact that the petitioner is facing trial for serious offences, this Court is inclined to partly allow this petition. The order passed by the Court below in CrI.M.P.No.337 of 2023, dated 03.01.2024 is partly modified and there shall be a direction to the Court below to summon the letter given by PW10, dated 22.06.2015.

10. This criminal original petition is disposed of in the above terms.

20.02.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

To

1. The II Additional District and Sessions Judge, Salem.
2. The Inspector of Police,
Sooramangalam Police Station,
Salem City.
3. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

CRL.O.P No.2794 of 2024

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