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Crl.O.P.Nos.13495 and 13709 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2024

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.13495 and 13709 of 2023

M.Jai Shankar

.. Petitioner in
both cases

/versus/

1.The State Represented by
The Inspector of Police,
Sethiyathopu Police Station,
Sethiyathopu 605 702,
Cuddalore District.

2.N.Vivekanandan

3.M.Krishnasamy

4.R.Nandhakumar

.. Respondents
in both cases

Prayer in Crl.O.P.No.13495 of 2023: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to set aside the order passed by the Learned Principal District and Sessions Judge, Cuddalore in Crl.M.P.No.7098 of 2022 in S.C.No.223 of 2017 dated 03.03.2023 and allow the Criminal Original Petition.



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Prayer in Crl.O.P.No.13709 of 2023: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to set aside the order passed by the Learned Principal District and Sessions Judge, Cuddalore in Crl.M.P.No.6880 of 2022 in S.C.No.223 of 2017 dated 03.03.2023 and allow the Criminal Original Petition.

For Petitioner : Mr.Thiyagarajan for
Mr.T.Balaji (in both cases)

For Respondents :Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1(in both cases)

COMMON ORDER

These Criminal Original Petitions have been filed challenging the orders passed by the Court below in Crl.M.P.No.7098 of 2022 and Crl.M.P.No.6880 of 2022 respectively, dated 03.03.2023, dismissing the applications filed by the petitioner under Section 91 of Cr.P.C., to direct for production of certain documents which are relevant for the case.

2. The petitioner filed a private complaint before the Judicial Magistrate No.1, Chidambaram under Section 200 of Cr.P.C. Since the



offence involved is exclusively triable by the Court of Sessions, the case was committed to the file of the learned Principal District and Sessions Judge, Cuddalore and the same was taken on file in S.C.No.223 of 2017.

3. Since the sessions trial has to be conducted only by the learned Public Prosecutor, the petitioner, being the defacto complainant, filed applications seeking for certain documents on the ground that those documents are very much relevant, considering the nature of the allegations that were made in the complaint.

4. The applications were resisted by the learned Public Prosecutor on the ground that the petitioner does not have the locus standi to file such applications.

5. The Court below, on considering the objections raised by the learned Public Prosecutor, sustained the same and also gave a reason that such applications have been filed with enormous delay. Accordingly, the Court below dismissed the applications. Aggrieved by the same, the present Criminal Original Petitions have been filed before this Court.



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6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and also carefully considered the materials available on record.

7. There is no dispute with regard to the fact that the trial is now taking place before the Court of Sessions and hence, the requirement under Chapter XXIII will have to be complied with. The trial can be conducted only by the learned Public Prosecutor as per Section 225 of the Criminal Procedure Code. Accordingly, the trial is being conducted by the learned Public Prosecutor. The petitioner, being the original complainant in the private complaint, wanted certain documents to be produced in order to sustain the allegations made in the complaint. The learned Public Prosecutor instead of resisting these applications, could have independently applied his mind and decided as to whether these documents are required for the purpose of sustaining the allegations made in the complaint. Instead he took a technical stand that these applications are not maintainable and the Court below also agreed with the same.



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8. In the considered view of this Court, the procedure can only be handmaid for justice and procedure should not defeat the over all rights of the parties. It is the petitioner, who had initiated the private complaint and therefore, the petitioner is anxious to bring in all the relevant materials in order to sustain the allegations made in the compliant. Since the learned Public Prosecutor is now conducting the case, the learned Public Prosecutor is expected to take care of the interest of the petitioner and conduct the case before the Sessions Court. On going through the applications filed by the petitioner, it is seen that the documents that are sought to be relied upon, has direct bearing on the allegations that have been made in the complaint. Only three witnesses have been examined in this case till date.

9. In view of the above, it is left open to the learned Public Prosecutor to file an independent application before the Court below seeking for the same documents by assigning necessary reasons as to why those documents are required. The Court below shall deal with the said application and pass orders. This direction given to the Court below, will sufficiently take care of the grievance of the petitioner.



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10. In the light of the above discussions, these Criminal Original Petitions are disposed of with the above directions. The Court below shall complete the proceedings in S.C.No.223 of 2017 within a period of six months from the date of receipt of a copy of this order.

19.01.2024

Index:yes/no

Neutral Citation:yes/no
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To:

The Principal District and Sessions Judge, Cuddalore.



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N.ANAND VENKATESH, J.
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