



Crl. O.P.No.24305 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.24305 of 2024

and

Crl.MP.No.13686 of 2024

Santhi

.. Petitioner

Vs.

State, Rep by
The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.
Cr.No.310 of 2014

.. Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and set aside the order passed in Crl.MP.No.1852 of 2024 by learned Principal Sessions Judge at Tiruvannamalai order dated 09.09.2024.

For Petitioner : Mr.V.Jayaprakash Narayanan

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)



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ORDER

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The petitioner herein is one of the accused facing trial for offence under Sections 364 and 302 of IPC r/w 302 and 201 of IPC pending on the file of learned Principal Sessions Judge, Thiruvannamalai in S.C.No.73 of 2018.

2. During the course of the trial, the Investigating Officer has realized that the DNA Test conducted for identification of the deceased and the report received from Chemical Examiner in respect of the DNA test and Superimposition test not been included in the list of exhibits. The Chemical Examiners were not cited as witnesses in the list of witnesses furnished along with the final report. Therefore, had taken out an application under Section 311 of Cr.P.C to summon the Assistant Director of State Forensic Laboratory, who had examined the skull bone along with the photographs of the deceased and the Chemical Examiner who examined the blood stain for DNA test and compared the femur bone of deceased with that of the blood test of witnesses Dhanam, who is the mother of the deceased.

3. The trial Court on considering the reasons stated to summon the two witnesses namely Dr.D.Thilaga and Dr.Siva Priya as additional



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witnesses and the counter filed by the accused alleging that this application filed belatedly is to fill up the lacuna or gap or loopholes found in the prosecution case, allowed the application holding that the reports of these Scientific Experts mention the name of these two witnesses and there is no suppression on the part of the prosecution with regard to the documents. To test the veracity of the document proposed to be marked, the author of the document namely the Scientific Experts been sought to be examined. The trial Court has also observed that the accused will have all opportunity to test the veracity by cross examining the witness and therefore no prejudice be caused to the accused.

4. The learned counsel Mr.Jaya Prakash appearing for the petitioner has high lighted two issues while challenging the order of the Court below. The 1st issue is regarding the attempt of the prosecution to fill up the lacuna which they have failed to do before filing the final report. The 2nd issue is in respect of summoning the Scientific Experts when the statute under Section 293(4) of Cr.P.C, specifically say they need not be examined as witness and their opinion to be admitted without examining them.

5. The learned counsel also referred to the circular issued by Registrar General of Madras High Court dated 21.03.2019, wherein,



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direction to the trial Court directing them to follow the mandate of Section 293(1) of Cr.P.C and not to insist upon routine examination of Officers mentioned in Section 293(4) of Cr.P.C. In support of his argument, the learned counsel rely upon the Division Bench of this Court in **Saravanan Vs State** reported in 2019 SCC Online Madras 549.

6. The learned Government Advocate (Crl.Side) Mr.K.M.D.Mukilan submits that the Judgement of this Hon'ble High Court in Saravanan Case cited supra and the circular of the Registrar General of High Court dated 21.03.2019 are in respect of exemption granted to Scientific Experts attached to State Forensic Laboratory under Section 293(4) of Cr.P.C shall not be applied to this case in view of certain unique facts.

7. The facts in this case is that the reports of the DNA Expert and the Superimposition test report given by the Assistant Director, Forensic Laboratory was submitted to the Court from the Laboratory directly, so those two documents were not part of the list of documents annexed to the final report. Since those two documents are already on the Court record and the learned Principal Judge had perused it and found that the two witnesses sought to be summoned are the Authors of the reports and their name find place in the report has rights thought fit for just decision



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of the case, examination of these two witnesses is necessary. Further, the learned Judge has also recorded that the accused will have every opportunity to test the veracity of these two documents, once the witness mount the box and subject themselves for cross examination.

8. Section 293(4) of Cr.P.C no doubt exempts Scientific Experts of State Laboratory from being summoned, it is not that in all cases their appearance has to be dispensed. In case sufficient reasons shown by the prosecution or by the accused to summon them and subject them to cross examine, the Court can permit such requests to meet the ends of Justice. That apart, Section 311 of Cr.P.C consists of two parts, one is a power vested with the Court to summon a person to give evidence suomotu and another one is summoning a witness at the request of the prosecution or the accused.

9. The learned Government Advocate (Crl.Side) submits that two documents received by the Court from the Forensic Laboratory are very essential documents for the fair decision by the Court. By summoning the author of the documents, the prosecution as well as the accused will be evenly placed and Court can decide about its veracity by examining the author of those two documents. Hence, submitted that there is no illegality or irregularity in the order passed by the trial Court , allowing



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the application filed under Section 311 of Cr.P.C.

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10. The case diary produced by the Government Advocate perused.

The rival submissions made by the learned counsel appearing for the petitioner and the learned Government Advocate heard and considered in the light of the material available in a case diary

11. It is a case of murder and destruction of evidence, the deceased body was exhumed and thereafter this petitioner and others been found involved in the murder of Elumalai. Through the Court, the prosecution has sought the State Forensic Laboratory for DNA test and superimposition test. The State Forensic Laboratory after completion of the above two tests has forwarded the report directly to the Court and it forms part of Court record.

12. In the course of the trial, the Investigating Officer has thought fit that the de hors of Section 293 and 294 which exempts summoning experts to give evidence. The Public Prosecutor has thought fit to summon them and mark two documents through them to ascertain how they formed their opinion and on what basis they formed the opinion.

13. The reading of Section 293 of Cr.P.C makes clear that it does not absolutely bar summoning of Government Scientific Experts, contrarily it is an option to the prosecution. However, if the Court thinks



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fit it should summon and examine any such expert, it can summon the witness in exercise of power under 293(2) of Cr.P.C.

14. In this case, since the report has been received directly by the Court, the prosecution has not mentioned these documents in the list of exhibits and the author of the documents in the list of witnesses. Nonetheless the said omission will no way deter the Court from looking into those documents which are addressed to the Court and the part of the record to mark it as court exhibits. However, the trial Court has thought fit that for just decision marking of the document exercising power under Section 293 and 294 without examining the expert may not be sufficient and the application filed under Section 311 of Cr.P.C by the prosecution to be entertained, so that the accused will have the fair opportunity to test the veracity of those two documents by cross examining the witnesses.

15. Therefore, this Court finds that the trial Court has applied his mind on the consequence of allowing the application under Section 311 of Cr.P.C by the prosecution and had allowed for the reason morefully stated in the impugned order.

16. This Court is of the view that the order is more just and fair for prosecution as well as the accused. This will give opportunities to the parties to test the veracity of the document by examining and cross



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examining the witnesses instead of admitting the document without testing the veracity of the contents. Therefore, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

17. The trial Court shall ensure that the copy of the documents proposed to be marked through these witnesses shall be served to the accused persons well in advance before examination of these two witnesses.

03.10.2024

Vv

To

1. The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.
2. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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