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CRL REF NO. 1 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23-01-2025**

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THE HONOURABLE MR JUSTICE S.M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL REF NO. 1 of 2019

Sessions Judge,
Mahila Court, Chengalpattu.

Appellant(s)

Vs

Public Prosecutor
High Court Madras.

Respondent(s)

For Appellant(s):

The Sessions Judge,
Mahila Court, Chengalpattu

For Respondent(s):

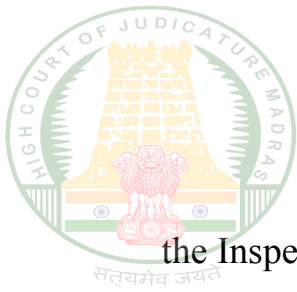
Public Prosecutor

PRAYER: Praying to accord necessary sanction U/s.308(1) Cr.P.C.

ORDER

(Order of the Court was made by the Hon'ble S.M.Subramaniam J.)

Criminal Reference No.1 of 2019 has been instituted based on the application submitted by the learned Sessions Judge, Mahila Court, Chengalpet in S.C.No(K).74 of 2016. 3 accuseds have been charged under Sections 120-B r/w 449 IPC, 302(2 counts), 307 (2 counts), 404, 380, 414 IPC r/w 109 IPC, by



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the Inspector of Police, Kundrathur Police Station.

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2. The 2nd accused, Sathya had filed a petition under Section 306 Cr.P.C (Section 343 BNSS) and pardon was rendered under Section 307 Cr.P.C (Section 344 BNSS), after recording his statement under Section 164(5) by the learned Judicial Magistrate, Alandur.

3. Trial has commenced against the 1st accused/Jayakumar and 3rd accused/Dhowlath Begum. During the course of trial, prosecution had examined 35 witnesses. The 2nd accused, Sathya who had turned approver, for whom pardon has been granted was examined as PW36. Since she did not reveal the entire truth before the Court and had resiled from the terms of grant of pardon, the learned Public Prosecutor had filed petition under Section 308 Cr.P.C, along with certificate as mandated under Section 308 Cr.P.C (Section 345 of BNSS).

4. The Sessions Court had taken the said application on file and numbered as Crl.M.P.No.1098 of 2018 and by a detailed order had allowed the application on 05.10.2018. The 2nd accused from the records available had not



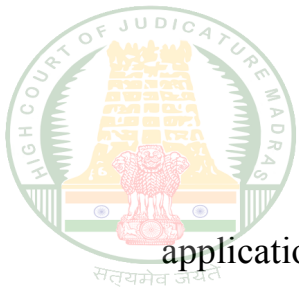
challenged the said order and consequently, it became final.

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5. Learned Sessions Judge, Mahila Court, Chengalpet had sent a letter dated 09.10.2018 addressed to the Registrar General, Madras High Court, requesting necessary sanction to be granted to try the 2nd accused/Sathya for the offence of giving false evidence. In the context of the order of the Sessions Court, and the letter sent by the learned Sessions Judge, Mahila Court, Chengalpet, the present Criminal Reference has been taken on file and listed for consideration.

6. The 2nd proviso to Section 308(1) Cr.P.C (Section 345 (1) 2nd proviso BNSS) enumerates that, *“Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.”*

7. In the present case, based on the application submitted by the learned Public Prosecutor, the Sessions Court numbered the application as CrI.M.P.No.1098 of 2018 and a detailed order has been passed allowing the



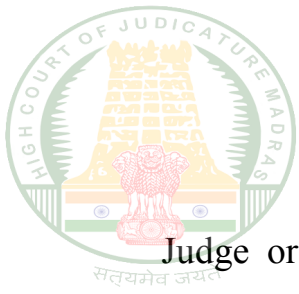
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application on 05.10.2018. The said order was passed after affording opportunity to all the parties. Thereafter, the learned Sessions Judge addressed a letter to Registrar General of Madras High Court seeking sanction under Section 308 Cr.P.C, which is mandatory.

8. Section 308 Cr.P.C itself contemplates procedures to be followed after according sanction by the High Court.

9. When the letter has been addressed to the Registrar General of Madras High Court by the Sessions Judge, Mahila Court, Chengalpet, the Registry, High Court raised a doubt, whether the application is to be dealt with on the Administrative side or the Judicial side of the High Court.

10. This Court is of the considered opinion that the language employed under Section 308 Cr.P.C is “High Court”. Wherever the word “High Court” has been employed in Cr.P.C, presently BNSS, it indicates only the Judicial side of the High Court, unless it is expressly clarified in any of the provisions of law. The word “High Court” under Cr.P.C means the Judicial side of the High Court. Therefore, the sanction is to be accorded on the Judicial side of the High Court, in the event of receiving an application from the Sessions



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Judge or the learned Magistrate, as the case may be, with reference to the nature of the offences involved.

11. For example, Section 366 Cr.P.C, Chapter XXVII deals with submission of death sentence for confirmation. Section 366(1) of Cr.P.C enumerates that, *“When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.”*

12. Under Section 366 Cr.P.C, the adjudication before the High Court it is to be construed as continuation of trial and it is numbered as referred trial before the High Court, for the purpose of considering grant of confirmation of death penalty imposed by the Sessions Court. Similarly, the sanction under Section 308(1) 2nd proviso is to be granted only on the Judicial side of the High Court. Therefore, hereinafter, the Registry on receipt of any application from the Sessions Court or the Magistrate Court, as the case may be, for according sanction under Section 308(1) 2nd proviso, the said application is to be numbered as Criminal Miscellaneous Petition and to be listed before the Court for according sanction. The sanction is to be accorded only to try the approver,



who violated the conditions before the Trial Court. Therefore, the petition filed seeking sanction is to be decided summarily by the High Court on satisfaction of the materials available on record.

13. As far as the procedures are concerned, the application filed by the learned Public Prosecutor was adjudicated by the Sessions Court and the Sessions Court found that the conditions agreed by the approver had been violated. Therefore, A2 in the present case is liable to be prosecuted.

14. In the present case, the learned Sessions Judge, Mahila Court, Chengalpet addressed the letter seeking sanction only after adjudication of the application submitted by the learned Public Prosecutor under Section 308 Cr.P.C (Section 345 of BNS). Therefore, no further adjudication needs to be undertaken on merits by the High Court. Taking note of the facts and circumstances, this Court accords sanction to the learned Sessions Judge, Mahila Court, Chengalpet to prosecute A2/Sathya by following the procedures as contemplated under law.

15. Accordingly, Reference stands answered.



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WEB COPY 16. The Registry of High Court is directed to circulate the copy of the order to all the District Courts across the State of Tamil Nadu and District Courts in Puducherry.

(S.M.SUBRAMANIAM J.) (M.JOTHIRAMAN J.)
23-01-2025

GD

To

1. Registrar General, High Court of Madras

2. Public Prosecutor
High Court Madras.



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M.JOTHIRAMAN, J.

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