

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS
JUDGE, THANJAVUR**

**Present: Tmt. A. Malarvizhi, M.L.,
II Additional District and Sessions Judge,
Thanjavur**

**Friday the 29th day of September 2023
(Thiruvalluavar Aandu 2054-Purattasi matham 12th day)**

Crl.M.P. No. 493/2023 in SC. No.301/2022

State represented by the Inspector of Police,
Kabisthalam Police Station Crime No.200/2022

.....Petitioner/Complainant

/vs/

(1) S. Ramesh @ Rameshkumar
(2) S. Rajalakshmi

....Respondents/Accused

This petition coming up for final hearing before me on **20.9.2023** in the presence of Thiru.**D.Thiyagarajan**, Special Additional Public prosecutor on behalf of the Petitioner/complainant and of **Thiru.N.Selvaraj**, Advocate for the respondent/accused and upon perusal of the material records pertaining to the case, this court delivered the following

ORDER

(1) This petition is filed by the petitioner/complainant u/s.311 of Cr.P.C to recall the witnesses PW1 to PW3.

(2) Heard both sides and records perused. The petitioner/prosecution has filed u/s.311 of Cr.P.C to recall P.W.1 to P.W.3 for marking their statements recorded u/s 164 (5) crpc by the Judicial Magistrate Papanasam.

The Public Prosecutor argued that P.W.1 to P.W.3 have given statement under section 164 of Cr.P.C., before the Judicial Magistrate, Papanasam. Mistakenly the investigation officer failed to record further statements from P.W.1 to P.W.3. with regard to their statements under section 164 of Cr.P.C., That mistake was not wanton. The case is posted for cross examination of P.W.1 to P.W.3. P.W.1 admitted in his cross examination he has given statement before the Judicial Magistrate, Papanasam. If those statements are not marked in this case it will seriously prejudiced the case of the prosecution. So, in order to mark the statement of P.W.1 to P.W.3 under section 164 Cr.P.C., they have to be recalled. So, this petition may be allowed.

(3) The respondent counsel argued that as per the Final report the alleged P.W.1 to P.W.3 were given statement before the Judicial Magistrate. But the above said witness have not stated the regarding under section 164 of Cr.P.C., statement. The petitioner/complainant have filed this petition without evidence of the P.W.1 to P.W.3. The Hon'ble High Court has delivered the Judgement regarding this aspect of 164 of Cr.P.C., Statement has to be marked through investigation officer. This petition is not maintainable. Hence, this petition is to be dismissed.

(4) Both side arguments and records considered. This court views that allowing the petition will not prejudiced the respondent. It will give opportunity to the respondent to contradict the evidence of PW1 to PW3. So this court

inclines to recall P.W1 to P.W.3 on the side of prosecution. So this petition is allowed as prayed for.

(5) In the result, this petition is allowed.

Dictated to Steno-typist typed by her, corrected and pronounced by me in open court, this the **29th day of September 2023.**

Sd/- A. Malarvizhi

**II Additional District & Sessions Judge,
Thanjavur.**

**Petitioner, respondents side
Witnesses and Exhibits : Nil**

Sd/- A. Malarvizhi

**II Additional District & Sessions Judge,
Thanjavur.**

Order
CrI.M.P.No.493/2023 in
S.C.No: 301/2022
Dated: 29.9.2023