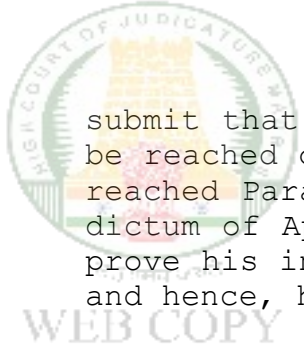




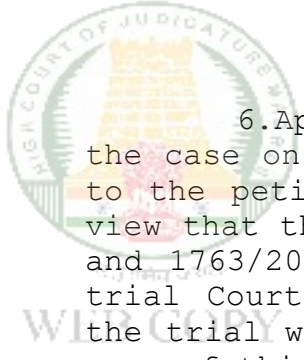
submit that in this order it was specifically stated that the bus has to be reached only at 01.15 p.m., but on the date of occurrence, the bus was reached Parapatti at 12.00 noon. He would further submit that as per the dictum of Apex Court, a fair opportunity must be given to the accused to prove his innocence and that factum was not considered by the trial Court and hence, he prays for setting aside the same.

3. Resisting the same, the learned Government Advocate (crl.side) would submit that the petitioner has very well obtained a time chart from his owner of the vehicle and produced before the Court to show that the R.S.R Private Bus has not reached the place of scene of occurrence at the time of accident. He would further submitted that the petitioner has very well ascertained the owner of the vehilce of Charles Bus. Instead of doing so, he come forward with this application and hence, he prays for dismissal.

4. Considering the rival submissions made by both sides and also considering the facts and circumstance of the case that the petitioner, who is the driver of R.S.R bus, is facing criminal trial for offence under Section 304(A) of I.P.C., on the basis of the complaint given by P.w.1, who is the daughter of the deceased viz., Gurusamy, that when she was examined as P.W.1 before the Court in chief, she has stated that Charles bus alone has dashed against her father, when her father was riding his bicycle, but as per the time permit given to the R.S.R bus to reach the Parapatti at 1.15 p.m., but whereas, the alleged occurrence has taken place at 12.00 noon and to corroborate the evidence of P.W.1 and the time chart of R.S.R bus and ownership of Charles bus is necessary, so he filed an application under Section 91 of Cr.P.C and also summoning the witness, RTO to produce the document; that it is true in the trial Court itself, it was specifically mentioned that the time for reaching the R.S.R bus to Parapatti at 1.15 p.m., but the alleged occurrence has taken place at 12.00 noon and the route permission of R.S.R bus only Sivakasi to Sattur and its running time is 20 minutes and in such circumstances, the trip chart, time permit given by the RTO is necessary to prove his innocence.

5. The Apex Court in **SIDHARTHA VASHISHT ALIAS MANU SHARMA V. STATE (NCT OF DELHI)**, reported in **(2010) 6 Supreme Court Cases 1**, has observed thus:

"197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."



6. Applying the ratio laid down in the decisions cited supra to the case on hand, I am of the view that a fair opportunity must be given to the petitioner/accused to prove his innocent and hence, I am of the view that the impugned order passed by the trial Court in Cr.M.P.Nos.1762 and 1763/2015, dated 25.03.2015 in C.C.No.33/11, are set aside and the trial Court is directed to issue summons to the witnesses and complete the trial within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, the criminal original petitions are allowed. Consequently, connected M.P., is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

Ns

To

1. The Judicial Magistrate,
Sivakasi.

2. The Inspector of Police,
Sivakasi East Police Station,
Sivakasi, Virudhunagar District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr. J. Jeya Kumaran Advocate Sr.No.47698

GJM/NGM/SS/11.9.15-3P-5C

Order made in
Crl.O.P. (MD) Nos.10760 and 11307 of 2015
and M.P. (MD) .No.1 of 2015
in
Crl.O.P. (MD) .No.10760 of 2015
Dated: 18.08.2015