



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.04.2015

CORAM
THE HON'BLE MR.JUSTICE M.M.SUNDRESH

CRL.O.P.(MD)No.4989 of 2015
and
M.P(MD)No.1 of 2015

Stalin .. Petitioner/Accused

.. Vs ..

The State rep. by
The Inspector of Police,
Surandai Police Station,
Tirunelveli District. .. Respondent

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to call for the records in Crl.M.P.No.34 of 2015 in S.C.No.354 of 2012, dated 26.02.2015 on the file of the IV Additional Sessions Judge, Tirunelveli and set aside the same and allow the petition.

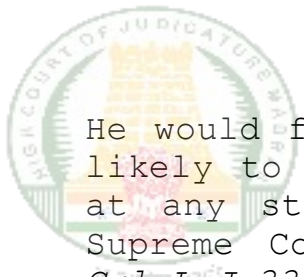
For Petitioner : Mr.P.Ramasamy
For Respondent : Mrs.S.Prabha
Government Advocate(Crl. Side)

O R D E R

This petition has been filed by the petitioner to set aside the order passed in Crl.M.P.No.34 of 2015 in S.C.No.354 of 2012, dated 26.02.2015 on the file of the IV Additional Sessions Judge, Tirunelveli.

2.The petitioner is an accused in S.C.No.534 of 2012. An application was filed by the petitioner belatedly during arguments under Section 233(1) Cr.P.C. The application filed by the petitioner was dismissed on the ground that it has been filed to drag on the proceedings. Challenging the same, the present petition has been filed.

3.The learned counsel for the petitioner submitted that the Medical Certificate issued by the Medical Officer attached to the Government Headquarters Hospital, Thoothukudi, dated 23.04.2013 speaks about the mental condition of the petitioner/accused. As the said Medical Officer is required to be examined as defence witness, the application has been filed. The Medical Certificate was issued only on 23.04.2013. Though there is a delay, the said delay cannot be a ground to reject the petition filed as sufficient opportunities will have to be given. He would further submit that discretionary power is wide under Section 311 Cr.P.C.



He would further submit that in the absence of prejudice that is likely to be caused, such a discretionary power can be exercised at any stage and he relies on the judgment of the Honourable Supreme Court in *Natasha Singh v. CBI(State)* reported in 2013 Crl.L.J.3346.

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4. The learned Government Advocate(Crl. Side) submitted that the petitioner has not availed the opportunity and hence, no interference is required, particularly, when the case is pending for nearly three years.

5. What the petitioner seeks is examination of a witness, who is the author of the document, dated 23.04.2013. The Medical Officer, who issued the said document is an Assistant Professor from the Department of Psychiatric. Said document, this Court is of the view that is very much relevant for deciding the case. Though, the Court below right in holding that the petitioner has not availed the opportunities earlier, taking note of the document produced, this Court is of the view that in the interest of justice one more opportunity will have to be given to the petitioner. Accordingly, the order dated 26.02.2015 passed in Crl.M.P.No.34 of 2015 by the IV Additional Sessions Judge, Tirunelveli, is set aside and the learned Judge shall give one more opportunity to the petitioner to examine the Medical Officer as defence witness. It is made clear that the petitioner shall not drag on the proceedings any further and shall co-operate with the conduct of trial.

This Criminal Original Petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Per.Admn)

/True copy/

Sub Assistant Registrar

pm

To

1.The IV Additional Sessions Judge, Tirunelveli.

2.The Inspector of Police,
Surandai Police Station,Tirunelveli District.

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

CRL.O.P. (MD) No.4989 of 2015

and M.P. (MD) No.1 of 2015

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