

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.09.2016****CORAM****WEB COPY****THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM****Crl.O.P(MD)No.13826 of 2016**

Sivaji @ Sivaji Ganeshan

.. Petitioner

vs.

The Inspector of Police,
Perungudi Police Station,
Madurai District.
In Crime No.38 of 2014

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and set aside the impugned order, dated 08.03.2016 passed by the learned Chief Judicial Magistrate, Madurai in Crl.M.P.No.123 of 2016 and consequently, direct the learned Chief Judicial Magistrate, Madurai, to accept the Batta amount of Rs.3,900/- to be deposited by the petitioner, permit the petitioner's counsel to cross examine the witnesses.

For Petitioner :Mr.R.Murugan

For Respondent :Mr.K.Anbarasan

Government Advocate (Crl.side)

O R D E R

The petition has been filed under Section 482 Cr.P.C, praying to set aside the order of the Chief Judicial Magistrate, Madurai passed in Crl.M.P.No.123 of 2016 in S.C.No.218 of 2015.

2. The petitioner is a sole accused in the Sessions Case and he is facing trial for the alleged offences under Sections 452, 324 and 307 of IPC. The prosecution has examined 13 witnesses to prove the charges made against the petitioner.

3. The petitioner has filed an application in Crl.M.P.No.123 of 2015 to recall P.Ws.1 to 13 for the purpose of cross-examination. The learned Chief Judicial Magistrate directed the petitioner to pay process fee. The petitioner having failed to comply with the order, filed Crl.M.P.No.162 of 2016, seeking extension of time for payment of process fee on the ground that he met with an accident. The learned Judge allowed the application on 16.02.2016. He came up with another application Crl.M.P.No.186 of 2016 for same relief, which was allowed on payment of costs of Rs.500/-. Even then, the petitioner did not pay the batta, so the application filed to recall the witnesses in Crl.M.P.No.123 of 2016 came to be dismissed on 8.03.2016.



Challenging the order, the present Criminal Original Petition is filed.

4. Mr.R.Murugan, the learned counsel for the petitioner would submit that the petitioner is facing serious charges, so he should be given one more opportunity to defend his case.

5. Per contra, Mr.K.Anbarasan, the learned Government Advocate (crl.side) for the State would submit that the petitioner is not interested to defend his case and despite providing ample opportunity, he did not pay the process fee. So, he is not entitled for any indulgence of this Court.

6. Heard the rival submissions and perused the materials available on record.

7. It is seen that the respondent has filed a case against the petitioner for the offences under Sections 452, 324 and 307 of IPC., in Crime No.38 of 2014. After investigation, the respondent has filed final report and due to non-payment of process fee, the application filed to recall P.Ws.1 to 13 was dismissed. Considering the fact that the petitioner has met with an accident and he was hospitalized, this Court is of the opinion that he should be given one more opportunity to defend his case.

8. In such view of the matter, the impugned order, dated 08.03.2016, passed by the learned Chief Judicial Magistrate, Madurai, in CrI.M.P.No.123 of 2016 is set aside and this Criminal Original Petition is allowed. The petitioner is directed to pay batta, within one week from the date on which the order copy is made ready, failing which, the Learned Judge shall decide the case on merits and in accordance with law.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

MPK

To

1 The Chief Judicial Magistrate, Madurai.

2.The Inspector of Police, Perungudi Police Station,
Madurai District.

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

+1CC to Mr.R.Murugan, Advocate Sr.No.53491

GJM/SS3/24.10.16-2p-5C

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