

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 26.08.2016****CORAM:****THE HONOURABLE Dr. JUSTICE S.VIMALA****Cr1.O.P. (MD) .No.15732 of 2016**

Ramachandran

.. Petitioner/Petitioner/Accused

Vs.

State Rep.by

The Inspector of Police,
Viruthunagar West Police Station,
Viruthunagar,

Viruthunagar District.

.. Respondent/Respondent/Complainant

(Crime No.853 of 2010)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. seeking to call for the records and set aside the order, dated 07.04.2016, passed in Cr.M.P.No.2223 of 2016, in C.C.No.153 of 2010 on the file of the Judicial Magistrate No.I, Viruthunagar, Viruthunagar District.

For Petitioner : Mr.A.Thiruvadi Kumar

For respondent : Mr.A.P.Balasubramani

Government Advocate (Criminal side)

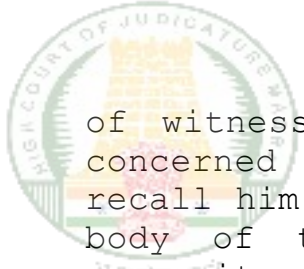
ORDER

This petition has been filed seeking to side aside the order, dated 07.04.2016, passed by the learned Judicial Magistrate No.I, Virudhunagar, in Cr.M.P.No.2223 of 2016 in C.C.No.153 of 2010.

2. A perusal of the order passed by the lower Court would go to show that even though the witnesses have been examined on different dates, the accused persons have been lethargic and did not deliberately cross-examine the witnesses PW1 to PW13.

3. The learned counsel for the petitioner would point out that the observation of the lower Court is not correct on material aspects and in fact, PW5 to PW10 have already been cross-examined and therefore, PW5 to PW10 need not be called for cross-examination.

4. It is true that PW5 to PW10 have been cross-examined on the dates mentioned. The fact remains that before the lower Court the counsel should have made himself available for cross examination



of witnesses PW1 to PW3 and PW12 and PW13. So far as PW4 is concerned he has turned hostile and there is no necessity to recall him. PW11 is concerned he has spoken only about carrying of body of the deceased for postmortem and hence there is no necessity to recall him. So far as remaining witnesses are concerned, even though there is a lapse on the part of the accused before the lower Court, considering the fact that the accused persons are facing charge under Section 304(A) IPC, this Court is of the view that the petitioner should be permitted to recall PW1 to PW3 and PW12 and PW13 for the purpose of cross examination subject to payment of costs of Rs.3000/- to be paid to PW1 and PW3 (together), on the date on which they appear for cross-examination. It is made clear that within two weeks from the date of receipt of a copy of this order, all witnesses should be produced before the lower Court on which date, without seeking further adjournments, irrespective of the number of witnesses produced, cross-examination should be finished on the same day.

5. Subject to the above condition, the order dated 07.04.2016, in Cr.M.P.No.2223 of 2016 in C.C.No.153 of 2010 is set aside. The petition is ordered accordingly.

Sd/-

Assistant Registrar (Crl.side)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I, Virudhunagar

2.The Inspector of Police,
Viruthunagar West Police Station,
Viruthunagar, Viruthunagar District.

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

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate, SR No.47451

Crl.O.P(MD)No.15732 of 2016
26.08.2016

jikr
SH/PV:24.10.2016:2P/5C