



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P. (MD) No.18773 of 2016

and

Crl.M.P. (MD) No.9383 of 2016

Binukumar

.. Petitioner/Petitioner/Sole Accused

-Vs-

The State represented by its
Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
Crime No.9 of 2006.

... Respondent/Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and set aside the order passed in Crl.M.P.No.8239 of 2016 in C.C.No.93 of 2006 dated 08.09.2016 on the file of the Judicial Magistrate Court No.I, Kuzhithurai.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Anbarasan

Govt. Advocate (Crl.Side)

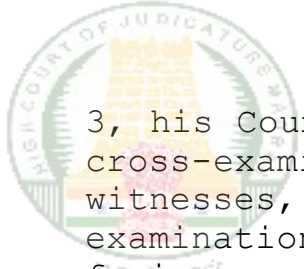
O R D E R

This petition is filed against the order passed by the learned Judicial Magistrate No.I, Kuzhithurai in Crl.M.P.No.8239 2016 in C.C.No.93 of 2006.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

3. The petitioner is the sole accused and he is facing trial for the offences under Sections 279, 338 and 304(A) I.P.C. The prosecution, in order to establish their case, examined P.Ws 1 to 6 and when the case is posted for further examination of the prosecution witnesses, the petitioner filed the petition in Crl.M.P.No.8239 of 2016 to recall P.Ws 1 to 3 for cross-examination. The learned Judicial Magistrate dismissed the application. Aggrieved over the order passed by the learned Judicial Magistrate, the present petition is filed.

4. Mr.S.Sivakumar, learned Counsel appearing for the petitioner would submit that the petitioner is an illiterate and he is a lorry driver and on the date of examination of P.Ws 1 to



3, his Counsel was out of station and therefore, they could not be cross-examined. Subsequently when the prosecution examined other witnesses, immediately the petitioner completed his cross-examination. It is further submitted that the petitioner is facing serious charges and if the witnesses P.W.1 and P.W.2 are not cross-examined, the petitioner would put to great hardship and loss.

5. The learned Government Advocate (Crl.Side) would submit that P.Ws.1 and 2 were examined on 30.11.2009 and after a lapse of six years, this present application is filed.

6. This Court considered the rival submissions and perused the materials available on record.

7. The learned Judicial Magistrate dismissed the petition only on the ground that it was filed after six years. It is not in dispute that the evidence of the prosecution is not yet completed. So, considering the fact that the petitioner is facing serious charges and in the interest of justice and to give adequate opportunity to the petitioner, the order passed by the learned Judicial Magistrate No.I, Kuzhithurai passed in Crl.M.P.No.8239 of 2016 in C.C.No.93 of 2006 would stand set aside subject to payment costs of Rs.2,500/- (Rupees Two Thousand Five Hundred only) to be paid by the petitioner to the High Court Legal Services Authority, Madurai on or before 13.10.2016. Accordingly, this Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate Court No.I, Kuzhithurai.
- 2.Inspector of Police,
Kaliyakkavilai Police Station, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Officer in charge,
The Legal Service Authority, Madurai.

+1 CC to M/s.S.SIVAKUMAR, Advocate, SR No.58618

Crl.O.P. (MD) No.18773 of 2016
04.10.2016

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