



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P.(MD).No.20026 of 2016

and

Crl.M.P.(MD).Nos.10047 and 10048 of 2016

Gurusamy

.. Petitioner/A1

Vs.

The State rep. by
The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
(Crime No.1105 of 2013)

.. Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed by the learned II-Additional District and Sessions Judge, Thoothukudi, by being the Presiding Officer in charge of the I-Additional District and Sessions Court, Thoothukudi, on a memo filed by the prosecution vide his order, dated 05.10.2016 and consequently direct the respondent to comply with the order passed by the learned I-Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.397 of 2015 vide his order, dated 28.11.2015, by supplying the statements of the witnesses sought for under Section 91 Cr.P.C. in connection with the case in S.C.No.369 of 2015, pending on the file of the I-Additional District and Sessions Court, Thoothukudi.

For Petitioner : Mr.R.Anand

For Respondent : Mr.A.P.Balasubramanian
Government Advocate (Criminal side)

ORDER

This petition has been filed to set aside the order passed by the learned II-Additional District and Sessions Judge, Thoothukudi, dated 05.10.2016, made in Cr.M.P.No.397 of 2015 and consequent direction to the respondent to comply with the order passed by the learned I-Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.397 of 2015 vide his order, dated 28.11.2015, by supplying the statements of the witnesses sought for under Section 91 Cr.P.C. in connection with the case in S.C.No.369 of 2015, pending on the file of the I-Additional District and Sessions Court, Thoothukudi.



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

3. The learned counsel for the petitioner would submit that according to the petitioner, the order passed by the learned I-Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.397 of 2015, vide his order, dated 28.11.2015, was not complied by the prosecution. The prosecution filed a memo stating that the statements of the witnesses sort for by the petitioner in Cr.M.P.No.397 of 2015 had already been converted in to one of a statement recorded under Section 161(3) of Cr.P.C. which were already supplied to the accused persons during the time of giving the copies of the case records under Section 207 Cr.P.C. The learned Judge has ordered a copy to be served to the petitioner counsel and ultimately posted the said memo for enquiry and consequently, the learned II-Additional District and Sessions Judge, Thoothukudi, who is in-charge of the said Court, by order dated 05.10.2016, without considering the objection made by the petitioner, accepted the memo filed by the prosecution and passed order by observing that the claim of the petitioner has to be decided only during the course of trial.

4. The learned Government Advocate (Crl. Side), on instruction, would submit that according to the prosecution, they have complied the order passed by the I-Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.397 of 2015, dated 28.11.2015.

5. In view of the rival submissions made by both counsels, this Court is of the view that the petitioner shall approach the trial Court by filing application for non-compliance of the order passed by the learned I-Additional District and Sessions Judge, Thoothukudi in Cr.M.P.No.397 of 2015, dated 28.11.2015, against the prosecution according to law.

6. In the result, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed. However, it is open to the petitioner to take action in accordance with law.

Sd/-
Assistant Registrar(As)

/True copy/

Sub Assistant Registrar

To

1. I-Additional District and Sessions Judge,
Thoothukudi.



2.II-Additional District and Sessions Judge,
Thoothukudi.

3.The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.

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

+1cc to MR.R.Anand, Advocate SR.No.80415

pjl

sm:CK:SAR 3:9.12.2016:3P/6C

CrI.O.P(MD)No.20026 of 2016