



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P (MD) No.22725 of 2016

and

Crl.M.P (MD) No.11898 of 2016

Parthiban

...Petitioner/Accused No.2

-Vs-

State,

Rep. By the Sub-Inspector of Police,
Karur Town Police Station,
Karur.

(Crime No.539 of 2015)

...Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records of the learned Judicial Magistrate No.I, Karur in Cr.M.P.No.6811 of 2016 in C.C.No.345 of 2015 and set aside the order, dated 27.09.2016.

For Petitioner

: Mr.S.Deenadhayalan

For Respondent

: Mr.P.Kannithevan

Govt. Advocate (Crl.Side)

ORDER

The petitioner, who is arrayed as accused in C.C.No.345 of 2015 on the file of the learned Judicial Magistrate No.I, Karur, has filed this petition to set aside the order passed in Cr.M.P.No.6811 of 2016 in C.C.No.345 of 2015.

2.In order to prove the charges against the accused, the accused have examined P.Ws.1 to 5, however, the accused have not cross-examined the witnesses and thereafter, they filed the application to recall P.Ws.1 to 5 for the purpose of cross-examination.

3.The learned Judicial Magistrate No.I, Karur, having found that the petitioner should be given an opportunity to defend the case, has allowed the application on payment of Rs.500/- each. Due to the non-compliance, the petition was dismissed. Against the dismissal order, the present petition has been filed.

4.Mr.S.Deenadhayalan, learned counsel for the petitioner would submit that the petitioner is facing a serious charge of offence under Section 380 IPC and this case was registered only in
It is not the case of the respondent that the accused have been deliberately dragging on the proceedings and if an opportunity is given they are ready to cross-examine the



witnesses and this petition has to be allowed to meet the ends of justice. It is further submitted that the accused are ready to donate a sum of Rs.5,000/- (Rupees Five Thousand Only) to the Headmaster, Government Higher Secondary School, Alathur.

5. Heard the learned Government Advocate (Criminal Side) and perused the records.

6. I find force in the submission of the learned counsel for the petitioner and even recently the Supreme Court in the year 2016 has held that in order to provide a fair trial, the accused should be given an opportunity to cross-examine the witnesses. It is to be seen that the application to recall the witnesses was allowed, however, due to the failure of the accused in paying costs, it came to be dismissed.

7. Considering the fact that this case was filed in the year 2015 and the accused are ready to cross-examine the witnesses even in the next hearing, the order passed in Cr.M.P.No.6811 of 2016 in C.C.No.345 of 2015 is set aside and the Criminal Original Petition is allowed on condition that the accused shall cross-examine the witnesses P.Ws.1 to 5 on the same day of their appearance before the trial Court. Consequently, connected Miscellaneous Petition is also closed.

8. List the matter under the caption 'for reporting compliance' on 02.12.2016.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.1, Karur.

2. The Sub-Inspector of Police, Karur Town Police Station, Karur.

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

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.S.Deenadhayalan, Advocate in SR.78486

Cr1.O.P. (MD) No.22725 of 2016
01.12.2016

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