



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. (MD) No. 4092 of 2016

WEB COPY

Duraipandi

... Petitioner

Vs.

State rep. by
The Inspector of Police
Kulasekarapattinam Police Station,
Thoothukudi District

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Cr.M.P.No.1882 of 2016 in C.C.No.286 of 2010 dated 25.02.2016 on the file of the Judicial Magistrate, Thiruchendur and set aside the order imposing cost of Rs.2000/- for each of the three witnesses.

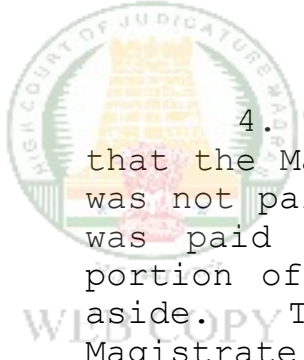
For Petitioner	: Mr.R.J.Karthick
For Respondent	: Mr.A.P.Balasubramani

ORDER

This petition has been filed seeking to set aside the order dated 25.02.2016 made in Cr.M.P.No.1882 of 2016 in C.C.No.286 of 2010 on the file of the Judicial Magistrate, Thiruchendur.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Cr1. Side) for the respondent.

3. On a careful reading of the impugned order, it appears that the prosecution had examined P.Ws.1 to 3 on 10.07.2013 and the defence did not choose to cross examine the witnesses and therefore, the evidence was closed. The defence have filed an application on 02.12.2014 under Section 311 Cr.P.C. for recalling P.Ws.1 to 3, which was allowed by the Court on the same day on condition that the defence should pay batta. According to the learned counsel for the petitioner, batta was paid on 02.12.2014 itself. But for reasons best known, the witnesses were not summoned. The Investigating Officer was examined on 04.02.2016 and the prosecution evidence was closed on that date. The accused were questioned under Section 313 Cr.P.C. on 09.02.2016. Thereafter, the accused have filed Cr.M.P.No.1882 of 2016 under Section 311 Cr.P.C. for recalling P.Ws.1 to 3, which was allowed by the Court on condition that they should pay a cost of Rs.2,000/- per witness. Aggrieved by which, the accused are before this Court.



4. The learned counsel for the petitioner/accused submitted that the Magistrate had gone on erroneous understanding that batta was not paid, but whereas, the records clearly show that the batta was paid as early as on 02.12.2014 itself. Therefore, that portion of the order passed by the Magistrate requires to be set aside. Therefore, this Court holds that the finding of the Magistrate that batta was not paid by the accused may not be correct. However, this Court does not find any serious infirmity in the order passed by the learned Magistrate inasmuch as when a witness is examined in chief, the cross examination should be done on the very same day as held by the Supreme Court in **Vinod Kumar v. State of Punjab** reported in (2015) 3 SCC 220, otherwise, there will be an attempt by the accused to win over the witnesses on account of lapse of time. The learned Magistrate has awarded cost of Rs.2,000/- per witness and this Court is of the view that it will be in the fitness of things, if the cost is reduced to Rs.1,000/- (Rupees one thousand only) per witness. The witnesses shall be summoned within two weeks from the date of receipt of a copy of this order and the accused shall cross examine them. If any of the witness is dead or unavailable, the accused will have to bear the consequences of it and no adverse inference can be drawn against the prosecution case. It is the accused, who had missed the bus by not cross examining the witnesses contemporaneously. Therefore, they cannot be given any special advantage.

5. With the above direction, this petition is disposed of. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

Madurai Bench of Madras High Court,
Madurai.

RR

To

1.The Judicial Magistrate, Tiruchendur.

2.The Inspector of Police

Kulasekarapattinam Police Station, Thoothukudi District.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.R.J.Karthick, Advocate, SR No.13330

CRL.OP(MD)No.4092 of 2016
and Crl.M.P.No.2068 of 2016
09.03.2016