



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C.(MD)No.25 of 2016

and

Crl.M.P(MD)No.596 of 2016

Tamilarasan

... Petitioner/Accused No.1

Vs.

State through:-

The Inspector of Police,CBCID,
(District Crime Branch,
In Crime No.14 of 1999),
Thanjavur District.

... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the impugned order passed by the Judicial Magistrate, Thiruvaiyaru, Thanjavur in Crl.M.P.No.7692 of 2015 in P.R.C.No.40 of 2011, dated 25.11.2015, set aside the same and allow this revision.

For Petitioner : Mr.M.Subash Babu

For Respondent : Mr.P.Kannithevan,
Government Advocate(Crl. Side)

O R D E R

The Petitioner has preferred the instant Criminal Revision Petition as against the order, dated 25.11.2015 in Crl.M.P.No.7692 of 2015 in P.R.C.No.40 of 2011 passed by the Learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District.

2. The Learned Judicial Magistrate, Thiruvaiyaru while passing the impugned order in Crl.M.P.No.7692 of 2015, dated 25.11.2015 (filed by the Revision Petitioner/A-1) had observed the following:

"Petition and materials are perused. Other side objection also perused. On perusal of materials, this PRC is pending for past 4 years for appearance of all accused. Moreover this case is only for committal stage. Hence, in this stage, this petition is not maintainable. Hence, this petition is dismissed."

and resultantly dismissed the Petition.



3. Assailing the correctness, validity and legality of the impugned order, dated 25.11.2015 in CrI.M.P.No.7692 of 2015 passed by the trial Court, the Revision Petitioner/A-1, has focussed the present Criminal Revision Petition mainly contending that the said order is an erroneous one both in Law and on facts.

4. Advancing his arguments, the Learned Counsel for the Revision Petitioner submits that the trial Court had failed to take into consideration that there are three accused in the present case and one accused is in abroad and warrant was issued against him and the same is pending for quite a long time.

5. It is represented on behalf of the Petitioner/A-1 that the Petitioner/A-1 was appearing before the trial Court on every hearing date, but there is no progress in regard to the present case and that the case could not be committed before the Sessions Court inasmuch as one accused namely A-3 is in abroad.

6. Per contra, it is the contention of the Learned Government Advocate(Crl. Side) for the Respondent that the Petitioner/A-1 never co-operated with the Investigating Agency and is also irregular in attending the Court and every time he used to file 317 of Cr.P.C Application/Petition to condone his absence before the trial Court and the case before the trial Court had reached the committal stage and the case against connected accused was already split up. Continuing further, the Learned Government Advocate (Crl. Side) for the Respondent urges before this Court that the Petitioner/A-3 is accused in a grave crime case, which is pending from the year 1999 and as such, the Petitioner is adopting a dilatory tactics from the beginning.

7. Besides the above, it is brought to the notice of this Court on behalf of the Respondent that the Petitioner/A-1 filed CrI.O.P.No.12705 of 2003 which was dismissed on 17.03.2005 by this Court. Similarly, the Petitioner projected CrI.O.P.No.9119 of 2003 and the same was dismissed for default on 27.05.2012. Moreover, the Petitioner had attended the trial Court on four days only viz., 21.03.2014, 08.09.2014, 26.03.2015 and 16.12.2015 respectively. Indeed he had absented on the following dates:

(I) 23.01.2014, (ii) 28.02.2014, (iii) 07.03.2014, (iv) 11.04.2014, (v) 02.05.2014, (vi) 16.05.2014, (vii) 26.06.2014, (viii) 27.06.2014, (ix) 25.07.2014, (x) 16.10.2014, (xi) 20.11.2014, (xii) 08.01.2015, (xiii) 29.01.2015, (xiv) 19.02.2015, (xv) 17.03.2015, (xvi) 30.03.2015, (xvii) 23.04.2015, (xviii) 03.06.2015, (xix) 24.06.2015, (xx) 29.07.2015, (xxi) 23.09.2015, (xxii) 07.10.2015, (xxiii) 28.10.2015, (xxiv) 04.11.2015, (xxv) 25.11.2015, (xxvi) 16.12.2015, (xxvii) 24.12.2015, (xxviii) 11.01.2015, (xxix) 12.01.2015 and (xxx) 22.01.2016.

<https://hcservices.courts.gov.in/hcservices/>

8. At this stage, this Court has perused the contents of CrI.M.P.No.7692 of 2015 filed by the Petitioner under Section 205

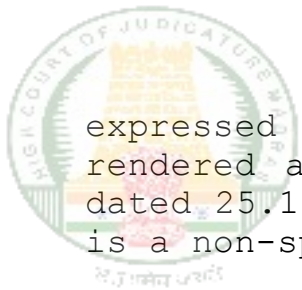


of Cr.P.C., before the trial Court. In the said miscellaneous petition, the Revision Petitioner/Petitioner/A-1 had among other things averred that in his avocation as an Advocate, he had to appear in many important cases before the Honourable High Court and therefore, had sought for passing of an order by the trial Court to dispense with his personal attendance.

9. It is to be borne in mind that exemption from personal appearance sought for by the Revision Petitioner/A-1, cannot be claimed by him as a matter of right. However, while dealing with the petition for exemption, the discretion of the Court is yet to be exercised in a careful and judicious manner. It cannot be gainsaid that the ingredients of Section 205 of Cr.P.C., and the ingredients of Section 317 of Cr.P.C., do operate in different arena.

10. One cannot brush aside an essential fact that in a Petition filed under Section 205 of Cr.P.C., a Court of Law is to consider whether any useful purpose would be served by requiring the personal attendance of an accused or whether the progress of the case is likely to be hindered on account of the absence of the Petitioner/Accused. A Court of Law can grant exemption from personal appearance in respect of a person when it is subjectively feels that dispensing with the personal appearance would only be in the interest of justice. As a matter of fact, a Court must exercise its judicial thinking mind and discretion while granting exemption under Section 205 of Cr.P.C., of course after due consideration of all attendant facts and circumstances including the social status, customs and practice of the accused etc. Ordinarily, a Court of Law may be liberal in exempting an accused from appearance except in cases of serious nature and cases of moral habitude. In reality, Section 205 of Cr.P.C., is not employed to dispense with the personal appearance of an accused facing prosecution in serious cases. But the personal appearance of an accused in the course of trial is only for a purpose and if no useful purpose is to be served by personal appearance day after day, then in the considered opinion of this Court, it should be dispensed with. However, the Learned Judicial Magistrate shall still retain the power to order for personal appearance whenever necessary.

11. Be that as it may, on a careful consideration of respective contentions and in view of the fact that the Petitioner/A-1 had expressed his difficulty in appearing before the trial Court (As seen from his Petition in CrI.M.P.No.7692 of 2015 in P.R.C.No.40 of 2011 on the file of the trial Court wherein he had mentioned that in his Advocate Profession, he has to appear in many important cases), this Court at this stage on going through the signed order, dated 25.11.2015 in CrI.M.P.No.7692 of 2015 passed by the trial Court, is of the considered view that the trial Court had not adverted to anything about the difficulty



expressed by the Petitioner/A-1 in one way or other and had not rendered a finding to that effect. As such, the impugned order, dated 25.11.2015 passed in Crl.M.P.No.7692 of 2015, to that extent is a non-speaking one, in the considered opinion of this Court.

12. In this connection, this Court very significantly points out that ascribing 'reasons' are the flesh and blood in the course of an order/judgment passed by the competent Court. In fact, the order to be passed by the Court of Law either in order or judgment, should not be like a inscrutable sphinx, as opined by this Court. Since the impugned order in Crl.M.P.No.7692 of 2015, is silent in not adverting to the difficulty expressed by the Petitioner/A-1 in the Miscellaneous Petition, this Court on this ground alone sets aside the impugned order of the trial Court, because of the reason that the said order suffers from material irregularity and legal infirmity. Viewed in that perspective, this Criminal Revision Petition succeeds.

13. In the result, the Criminal Revision Petition is allowed. Consequently, the order dated 25.11.2015 in Crl.M.P.No.7692 of 2015 in P.R.C.No.40 of 2011 passed by the Learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District, is set aside by this Court for the reasons assigned in this Revision. The Learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District, is directed to restore the Crl.M.P.No.7692 of 2015 on his file and is directed to pass a reasoned speaking order on merits in qualitative and quantitative terms and that too in a dispassionate manner not influenced and untrammelled with any of the observations made by this Court in this Revision. Liberty is granted to the respective parties to raise factual and legal pleas in the manner known to Law and in accordance with Law. Moreover, the trial Court is directed to provide adequate opportunities to both sides by adhering the principles of natural justice. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

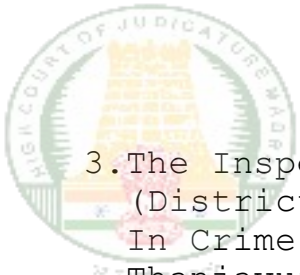
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Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

pm
To

1.The Judicial Magistrate, Thiruvaiyaru, Thanjavur District.

2.Do thro The Chief Judicial Magistrate, Thanjavur District.



3.The Inspector of Police,CBCID,
(District Crime Branch,
In Crime No.14 of 1999),
Thanjavur District.

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

+1 cc to Mr.M.Subash Babu, Advocate, SR No.4654

RG.SK-SKN/ 03.02.2016 5P.6C

Cr1.R.C.(MD)No.25 of 2016
25.01.2016