

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.4642 of 2017
and
Crl.MP.No.3556 of 2017

M.Gunasekaran

... Petitioner/Accused

Vs

The State rep. by Inspector of Police,
South Police Station,
Tiruppur,
Tiruppur District.

... Respondent/Complainant

Criminal Original Petition filed under Section 482
Cr.P.C. to set aside the order dated 30.01.2017 made in
CMP.No.193 of 2017 in CC No.652 of 2013 on the file of the
Judicial Magistrate No.II at Tiruppur.

For Petitioner : Mr.K.Kathiresan

For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate(Crl.Side)

ORDER

The present Criminal Original Petition has been filed
to set aside the order dated 30.01.2017 made in CMP.No.193 of
2017 in CC No.652 of 2013 on the file of the learned
Judicial Magistrate No.II, Tiruppur.

2. It is the case of the petitioner that he has been
charge sheeted for the offences punishable under Sections 297
and 304(A) IPC in Crime No.1227 of 2003 and the charge sheet was
taken on file as CC No.652 of 2013 by the learned Judicial
Magistrate No.II, Tiruppur. Subsequently, trial has commenced,
during the course of which, PW1 to PW8 were examined and were
cross examined. Documents were also marked. While so, he filed
a petition in CMP.No.193 of 2017 seeking permission to recall
PW4 for the purpose of further cross examination by the defence
side, as he was an important witness and he wanted to cross
examine him, in order to elucidate some true facts. However, by
order dated 30.01.2017, the learned Magistrate dismissed the
said petition. Hence, this Criminal Original Petition.

3. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Crl.Side), who took notice for the respondent.

4. A perusal of the order impugned herein would reveal that the learned Magistrate has dismissed the petition filed by the petitioner under Section 311 Cr.P.C, on the ground that the reason cited for again cross examining PW4 was not convincing, which, in my view, is a non-speaking order. The reasons are required to be recorded in the order to enable the litigants to know the reasons which weighted with the mind of the Court in determining the question of fact and law. Thus, the learned Magistrate, before rendering any decision, has to give a clear finding and a reasoned order. On this ground alone, the impugned order is liable to be quashed.

5. Accordingly, this Criminal Original Petition is allowed and the order dated 30.01.2017 passed by the learned Judicial Magistrate No.II, Tiruppur in CMP.No.193 of 2017 is set aside. The matter is remanded back to the trial court for fresh consideration. The learned Magistrate shall consider the same and pass a speaking order on merits and in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II, Tiruppur.
2. The Inspector of Police, South Police Station, Tiruppur, Tiruppur District.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.14455

Crl.O.P.No.4642 of 2017

SAI(CO)
CA(07/04/2017)