



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **21.08.2017**

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Cr1.O.P(MD)No. 10770 of 2017 and
Cr1.M.P(MD).No.7375 of 2017

Pichi @ Kennady ...Petitioner/Petitioner/Sole Accused

-Vs-

State rep. by
The Sub Inspector of Police,
Kulasekharam Police Station,
Kanyakumari District.
(Crime No.17 of 2009) ...Respondent/Respondent/Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C for a direction to call for the records and set aside the order dated 14.07.2017 passed in C.M.P.No.2960 of 2016 in C.C.No.206 of 2009 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District.

For Petitioner	: Mr.A. Thiruvadikumar
For Respondent	: Mr.K. Anbarasan
	Government Advocate (Cr1. Side)

O R D E R

This petition is filed to call for the records and set aside the order dated 14.07.2017 passed in C.M.P.No.2960 of 2016 in C.C.No.206 of 2009 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District.

2. On the basis of the complaint, a case was registered against the petitioner, who is the sole accused in this case and thereafter, charge sheet has been filed and it was taken on file in C.C.No.206 of 2009 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District, for the offences under Sections 341, 324 and 326 of IPC.

3. The learned counsel appearing for the petitioner states that the petitioner failed to cross examine the witnesses PW.1 and PW.2, due to some un-avoidable reasons, which was not properly explained by the counsel for the petitioner before the Court below. However, the petition filed under Section 311 of Cr.P.C to recall the two witnesses viz., PW.1 and PW.2 was dismissed by the lower Court.



4. From the facts it is seen that witnesses were examined on 02.04.2014 and the petition itself was filed in the year 2016, after a period of two years. Further, in the petition no reason is stated for recalling the witness viz., PW.1 and PW.2. It is well settled that the petition filed under Section 311 of Cr.P.C can be entertained only if proper reason given. The Court cannot mechanically allow the petition, unless there is sufficient reason.

5. This Court is not inclined to entertain this petition, however, in view of the submission made by the learned counsel appearing for the petitioner that the petitioner's counsel was careless in not filing a petition with reasons and that the petitioner should be given a reasonable opportunity to prove his case, this Court is inclined to allow the petition, but, however, subject to terms:

"Accordingly, the Criminal Original Petition is allowed with a direction to the lower Court to give one more opportunity to the petitioner to recall the witnesses PW.1 and PW.2 for cross examination on a single day, subject to the condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the de facto complainant / victim".

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sub Inspector of Police,
Kulasekharam Police Station,Kanyakumari District.
 2. The learned Judicial Magistrate, Padmanabapuram,
Kanyakumari District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- +1cc to M/S.A.THIRUVADI KUMAR, Advocate SR.No.73363

trp

MAS/JC/SAR2:11.09.2017:2P-5C

Crl.O.P(MD)No.10770 of 2017 and