



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.08.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD)No.11327 of 2017 and
CRL.M.P. (MD)No.7785 of 2017

Kandasamy

... Petitioner/Accused

-Vs-

State represented by,
The Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.
(Crime No.110 of 2011)

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P. (MD)No.1103 of 2017 in C.C.No.248 of 2011 on the file of the learned Judicial Magistrate No.II, Srivilliputhur, dated 19.06.2017.

For Petitioner : Mr.A.Jayaramachandran

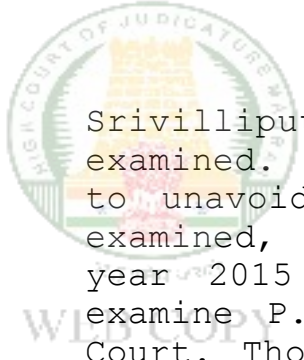
For Respondent : Mr.K.Anbarasan,
Government Advocate(Crl. Side).

O R D E R

This Criminal Original petition is filed to set aside the order passed in Crl.M.P.(MD)No.1103 of 2017 in C.C.No.248 of 2011 on the file of the learned Judicial Magistrate No.II, Srivilliputhur, dated 19.06.2017.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Criminal side) appearing for the respondent.

3. The petitioner is the sole accused and he was charged for the offence under Section 304(A) I.P.C., in Crime No.110 of 2011 on the file of the respondent police. After completing the investigation, the case was taken on file in C.C.No.248 of 2011, on the file of the learned Judicial Magistrate No.II,



Srivilliputhur. On the side of the prosecution, 11 witnesses were examined. However, no one was cross examined. Stating that due to unavoidable circumstances, the witnesses could not be cross examined, the petitioner appears to have filed a petition in the year 2015 in CrI.M.P.No.1023 of 2015 to recall and to cross examine P.W.3 and P.W.5 and the same was allowed by the trial Court. Though all the witnesses were examined in the year 2014, the petitioner filed another petition in CrI.M.P.No.1103 of 2017, seeking permission to cross examine P.W.9 to P.W.11. The said application was however dismissed by the trial Court on 19.06.2017. Against the said order, the above Criminal Original petition is filed.

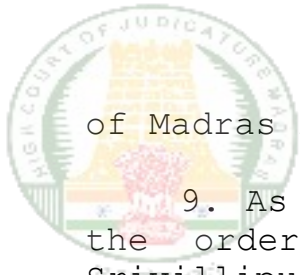
4. The learned counsel for the petitioner submitted that the cross examination of P.W.9 to P.W.11 are crucial and that the petitioner will be greatly prejudiced if such an opportunity is not given.

5. The application filed by the petitioner was dismissed by the trial Court mainly on the ground that the earlier application filed in the year 2015 was only with reference to P.W.3 and P.W.5 and that therefore, the application which was once again filed for cross examination of P.W.9 to P.W.11 in the year 2017 has no merits. It was further observed by the trial Court that the application was highly belated and that therefore, there was no *bonafides*.

6. The learned counsel for the petitioner however relied upon the Judgment of this Court, in the case of **Arumugam and another V. The State represented by its Station House Officer**, reported in **2015-1-L.W. (CrI.) 607**. The said Judgment is relied upon by the petitioner for the proposition, even if the delay is huge, the petition to recall for cross examination can be allowed. Hence, it is about the discretionary power of Court which cannot be applied to a case where there is no explanation for the delay.

7. In this case, this Court is of the view that sufficient opportunity should be given to the petitioner. Though in this case, the learned counsel for the petitioner is not able to convince this Court about the long delay and the failure to file the application in the year 2015 itself, when similar application was filed seeking permission to recall and cross examination of P.W.3 and P.W.5, this Court is able to see that serious prejudice will be caused to the petitioner, in case the petitioner is denied permission to recall P.W.9 to P.W.11 and to cross examine them.

8. In that view of the matter, this Court is inclined to allow this Criminal Original petition subject to payment of a sum of **RS.10,000/- (Rupees Ten Thousand only)** by way of cost payable by the petitioner to Hon'ble Chief Justice Relief Fund, Madurai Bench



of Madras High Court, Madurai.

9. As a result, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate No.II, Srivilliputhur, in CrI.M.P.No.1103 of 2017 in C.C.No.248 of 2011 is set aside and the petition filed by the petitioner in CrI.M.P.No.1103 of 2017 in C.C. No.248 of 2011 is allowed subject to payment of cost indicated above and the petitioner is directed to cross examine all the three witnesses on the date when the witnesses appear, without seeking any further adjournment in the matter. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.

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

Copy to :

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.Jeyaramachandran, Advocate in SR.No.75029

pmu

AE/SV MMS/SAR1/12.09.2017/3P/5C

CRL.O.P. (MD)No.11327 of 2017
29.08.2017