



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.OP.(MD) No.11593 of 2017

and

CRL.MP(MD) No.7965 of 2017

S.Sivakala Perumal

... Petitioner/Petitioner

Vs.

The Inspector of Police,
Nesamani Nagar Police Station,
Nagercoil,
(in Crime No.511 of 2007)

... Respondent/Respondent

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 17.06.2017 in Crl.M.P.No.2604 of 2017 in C.C.No.97 of 2007 on the file of the Judicial Magistrate No.II, Nagercoil and direct the court below to recall the prosecution witnesses for cross examination.

For Petitioner	: Mr.C.T.Perumal
For Respondent	: Mr.K.Anbarasan
	Government Advocate

ORDER

The Criminal Original Petition has been filed to set aside the order dated 17.06.2017 in Crl.M.P.No.2604 of 2017 in C.C.No.97 of 2007 on the file of the Judicial Magistrate No.II, Nagercoil and direct the court below to recall the prosecution witnesses for cross examination.

2.Heard, learned counsel appearing for the petitioner and the learned Government Advocate, appearing for the respondent.

3.The petitioner is the second accused in C.C.No.97 of 2007 on the file of the Judicial Magistrate No.II, Nagercoil. It is stated that the witnesses were examined on the side of prosecution in the year 2013 and 2014. It is stated by the petitioner that the witnesses could not be cross examined by the accused at the relevant point of time. Hence the petitioner filed a petition under Section 311 of Cr.P.C., to recall the PW-1, PW-2, PW-3, PW-6, PW-8, PW-9, PW-10 and PW-11 for cross examination before the Trial Court, in Crl.M.P.No.2604 of 2017. The said petition was dismissed on the ground that the witnesses were examined in the year 2013 and 2014 and that the petition for recalling the witnesses was filed only in the year 2017 and the long delay for filing the petition is not

properly explained by the petitioner.

4.The learned Judicial Magistrate was of the view that the petition is filed only to drag on the trial and the petition lacks *bonafides*. Though, the reasoning of the learned Judicial Magistrate cannot be faulted, as the delay was not properly explained by the petitioner, this Court finds that denying opportunity to the petitioner to recall the witnesses for cross examination would cause serious prejudice to the petitioner in defending his case.

5.In such view of the matter, this petition is allowed as one more opportunity can be given to the petitioner in the interest of justice subject to terms. The order in Crl.M.P.No.2604 of 2017 in C.C.No.97 of 2007, dated 17.06.2017, on the file of the learned Judicial Magistrate No.II, Nagercoil is set aside and this Criminal Original Petition is allowed, subject to the condition that the petitioner shall avail the opportunity by cross examining of the witnesses on the date when the witnesses are available for cross examination without unnecessarily asking any adjournment, unless it is required in the interest of justice and granted by the learned Judicial Magistrate in exercise of his discretionary power and subject to the condition that the petitioner shall pay a sum of Rs.5,000/-(Rupees five thousands) to the credit of the Hon'ble the Chief Justice relief fund, Madurai Bench of Madras High Court, Madurai. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Nesamani Nagar Police Station,
Nagercoil.
- 2.The Judicial Magistrate No.II,
Nagercoil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.C.T.PERUMAL Advocate in SR. No. 75906
CMR/IS
JS/SV.MMS/SAR.1/15.09.2017/2P-5C

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