



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.09.2017
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.11639 of 2017 and
CRL.M.P.(MD)No.8006 of 2017

Avudayappan @ Raj

... Petitioner/Sole Accused

-Vs-

State represented through,
The Inspector of Police,
Town Police Station,
Tirunelveli.
(Crime No.437 of 2015)

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Additional District Judge-IV, Tirunelveli, in Cr.M.P.No.541 of 2017 in S.C.No.199 of 2016, dated 09.08.2017 and to set aside the same.

For Petitioner
For Respondent

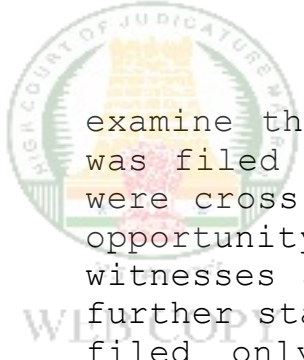
: Mr.S.M.A.Jinnah
: Mr.C.Ramesh,
Additional Public Prosecutor.

O R D E R

This Criminal Original petition is filed to set aside the order dated 09.08.2017, passed by the learned Additional District Judge-IV, Tirunelveli, dismissing the petition filed by the petitioner under Section 311 of Cr.P.C., to recall and to cross examine P.W.1 to P.W.9, in Cr.M.P.No.541 of 2017 in S.C.No.199 of 2016.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The trial Court dismissed the petition filed stating that this petition was filed only to drag on the proceedings. It is stated by the trial Court that the petitioner has earlier filed a petition to cross examine P.W.1, P.W.3 and P.W.4. Though the petitioner was allowed to recall and cross examine those witnesses once again, the petitioner and the defence counsel did not cross



examine the witnesses on that date. Once again similar petition was filed and the petition was allowed and P.W.1, P.W.3 and P.W.4 were cross examined. Though fair opportunity was given and further opportunity was also given subsequently with regard to other witnesses and the other witnesses were also cross examined, it is further stated by the trial Court that the present application was filed only after change of counsel for the petitioner. This petition was also filed belatedly at the time when the matter was posted for arguments. It is in these circumstances, the learned Judge was of-course justified in observing that this petition was filed only to drag on the proceedings without any merits.

4. The learned counsel for the petitioner also is not able to explain for allowing the petition under Section 311 of Cr.P.C., to further cross examine the witnesses who were effectively cross examined earlier, availing the opportunity given by the trial Court on earlier occasion. However, the learned counsel for the petitioner submitted that earlier the petitioner was in prison and that therefore, he would not give proper instructions to his counsel. In the said circumstances, this Court is of the view that one more opportunity can be given to the petitioner, however subject to terms.

5. Considering the fact that the petitioner has availed the opportunity to cross examine the witnesses on three occasions earlier and the fact that this Court is convinced only for the reasons that the petitioner could not give proper instructions to his counsel earlier, this Court is inclined to allow the Criminal Original petition on terms. The order passed by the learned Additional District Judge-IV, Tirunelveli, in Cr.M.P.No.541 of 2017 in S.C.No.199 of 2016, dated 09.08.2017 is set aside and the petition filed by the petitioner in Cr.M.P.No.541 of 2017 in S.C.No.199 of 2016 is allowed on payment of a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards costs to the credit of *the Hon'ble Chief Justice Relief Fund, attached to this Court*. The petitioner is directed to recall and cross examine the witnesses P.W.1 to P.W.9 when they are available before the Court, without asking any further adjournment. On payment of costs copy shall be issued.

6. The Criminal Original petition is allowed, accordingly. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True copy/



To

1. The Additional District Judge-IV,
Tirunelveli.

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

+ 1 CC TO MR.S.M.A.Jinnah, ADVOCATE IN SR No.76397

pmu

MK/SKN RSK/SAR-2/12.10.2017/3P/4C

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