



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.11847 of 2017 and
CRL.M.P. (MD) No.8154 of 2017

Murugan

... Petitioner/Sole Accused

-Vs-

State rep. By,
The Inspector of Police,
Petchiparai Police Station,
Kanyakumari District.
(Crime No.27 of 2005)

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for records and to set aside the order, dated 09.08.2017 passed in C.M.P.No.3447 of 2017 in C.C.No.41 of 2006 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

For Petitioner : Mr.A.Thiruvadi Kumar

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, dated 09.08.2017, passed in C.M.P.No.3447 of 2017 in C.C.No.41 of 2006 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

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

3. The learned counsel for the petitioner states that a case was registered as against the petitioner in Crime No.27 of 2005 for the offences under Sections 457 and 380 I.P.C., for stealing an old Iron box worth of Rs.1,000/-. It is stated that after filing of the Charge Sheet, the case was taken on file in C.C.No.41 of 2006 by the learned Judicial Magistrate, Padmanabhapuram.



4. The learned counsel for the petitioner further states that the petitioner could not cross examine the witnesses P.W.1 and P.W.2. After the examination of the witnesses P.W.3 and P.W.4 in the year 2013, it is stated that the petitioner had cross examined those two witnesses. It is further stated that the petitioner wanted to cross examine the witnesses P.W.1 and P.W.2 who are the material witnesses. It was therefore, the learned counsel for the petitioner states that an application in C.M.P.No.3447 of 2017 under Section 311 Cr.P.C., was filed for the purpose of recalling for the cross examination of the witnesses P.W.1 and P.W.2. It is also stated that even the delay was due to the examination of further witnesses in the year 2013. In such circumstances, the learned counsel for the petitioner states that the order of the lower Court, rejecting the application only on the ground of delay is not sustainable and that having regard to the settled position of law that a fair opportunity should be given to the accused to disprove the version of the complaint and to prove his case during the trial. He further reiterated that the order passed by the lower Court denying the opportunity to the petitioner cannot be sustained.

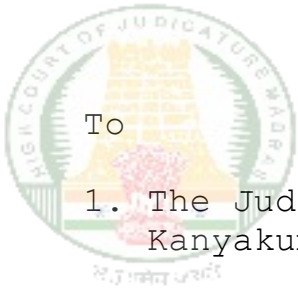
5. This Court though is not able to find any irregularity in the order of the lower Court, rejecting the application, especially having regard to the fact that the petitioner has not stated any reason even in this petition to recall the witnesses after this length of time. However, considering the fact that the evidence of the witnesses P.W.1 and P.W.2 are stated to be crucial and that fair opportunity should be given to the accused to defend his case effectively, this Court is inclined to allow this Criminal Original petition on terms.

6. As a result, the order passed by the learned Judicial Magistrate, Padmanabhapuram, in C.M.P.No.3447 of 2017 in C.C.No.41 of 2006, dated 09.08.2017, is set aside and the petition filed by the petitioner in C.M.P.No.3447 of 2017 in C.C.No.41 of 2006 is allowed, subject to the condition that the petitioner shall cross examine the witnesses P.W.1 and P.W.2 as and when they appear before the Court, without seeking any further adjournment. The petitioner is also directed to pay a sum of Rs.2,000/- (*Rupees Two Thousand only*) towards costs to the credit of *Hon'ble Chief Justice Relief Fund, attached to this Court*, within a period of two weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar



To

1. The Judicial Magistrate, Padmanabhapuram,
Kanyakumari District.
2. The Inspector of Police, Petchiparai Police Station,
Kanyakumari District.
3. 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.D.Thiruvadi kumar, Advocate in SR.No.77530

pmu

AE/KP/SAR1/15.09.2017/3P/6C

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