

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 12.09.2017

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

Crl.O.P. (MD) No.12000 of 2017
in
Crl.M.P. (MD) .No.8258 of 2017

Siluvai Rayan

: Petitioner / Accused No.3

-vs-

State, through the
Sub Inspector of Police,
Nesamany Nagar Police Station,
Nagercoil.

: Respondent / Respondent

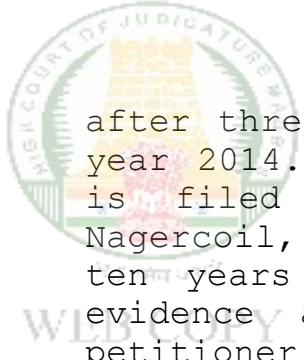
Prayer: Petition filed under Section 482 of Code of Criminal Procedure to stay all further proceedings in C.C.No.97 of 2007, on the file of the Judicial Magistrate Court No.II, Nagercoil, pending disposal of this Criminal Original Petition.

For Petitioner : Mr.J.Madhu
For Respondent : Mr.K.Anbarasan
Government Advocate(Crl.side)

O R D E R

This petition is filed to set aside the order passed by the learned Judicial Magistrate Court No.II, Nagercoil, passed in Crl.M.P.No.3159 of 2017 in C.C.No.97 of 2007. The petitioner is the third accused in a complaint which was registered earlier in crime No.511 of 2007 for the offences under Sections 352, 323, 324, 506(ii) r/w 34 of IPC. After enquiry, charge sheet was also filed and the case was taken on file in C.C.No.97 of 2007, on the file of the learned Judicial Magistrate No.II, Nagercoil.

2.Though the case was pending for a long time from 2007, it appears that witnesses PW.1 to PW.8 were examined from 11.09.2013. Except P.W.9 to P.W.11 all other witnesses were examined in chief even in the year 2014. Though the petitioner did not file the petition to cross examine any of the witnesses, the petition was filed by the petitioner/ third accused in Crl.M.P.No.3159 of 2016,



after three years from the date of examining PW.1 to PW.8 in the year 2014. Without any valid reason for the delay, this petition is filed and hence the learned Judicial Magistrate No.II, Nagercoil, refused to entertain the same as the matter is already ten years old and that the case is at the stage of defence evidence and stating that the judgment relied upon by the petitioner for the proposition that fair opportunities should be given to the petitioner is not applicable to the facts of the present case, where the petitioner has not given any explanation for getting the documents which according to him was required at the relevant time to cross-examine the witnesses in the case, dismissed the petition.

3. Challenging the said order, the present Criminal Original Petition has been filed by the petitioner. Though, this Court is not inclined to hold that the observations made by the learned Judge are not proper, on over all consideration of the facts and circumstances of the case and the legal implication of denying the fair opportunity to the petitioner to defend the criminal case, this Court is inclined to allow this petition on terms. As a result, the order passed by the learned Judicial Magistrate, No.II, Nagercoil, made in CrI.M.P.No.3159 of 2016 in C.C.No.97 of 2007 dated 21.07.2017 is set aside. The petition filed by the petitioner under section 311 of Cr.P.C in CrI.M.P.No.3159 of 2016 in C.C.No.97 of 2007 stands allowed, subject to the condition that the petitioner shall cross examine all the witnesses as and when they are made available without seeking any further adjournment. This order also will be subject to the condition of payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the Honourable Chief Justice's relief fund, Madurai Bench of Madras High Court, Madurai within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Nagercoil.

2. The Sub Inspector of Police,
Nagercoil.



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

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

+1cc to M/S. J.MADHU, Advocate, SR.No.78272.

Cr1.O.P.(MD) No.12000 of 2017
in
Cr1.M.P.(MD) .No.8258 of 2017
12.09.2017

tsg/dsk
SDS/GT/SAR 3/25.09.2017/3P/6C