



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.12358 of 2017

WEB COPY

1. Kasinathan
2. Govindan
3. Chandrasekaran

: Petitioners

-Vs-

The State rep. by
The Sub Inspector of Police,
Siruganur Police Station,
Siruganur.

: Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P.No.1923 of 2016 in C.C.No.54 of 2014 on the file of the learned Judicial Magistrate, Lalgudi.

For Petitioners
For Respondent

: Mr. J. Madhu
: Mr.K.Anbarasan,
Government Advocate(Crl.Side)

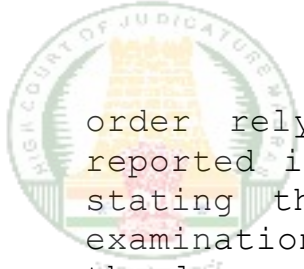
O R D E R

This petition is filed to set aside the order passed by the the learned Judicial Magistrate, Lalgudi in in Crl.M.P.No.1923 of 2016 in C.C.No.54 of 2014, dated 08.06.2017.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent.

3. The petitioners are accused nos. 1 to 3 in C.C.No.54 of 2014, which was pending in relation to the offences under Sections 294(b), 323 and 506(i) of IPC.

4. The petitioners stated that in the criminal case, PW.1 and PW.2 were examined on 19.01.2015. However, it is stated by the petitioners that the witnesses PW.1 and PW.2 were not cross examined immediately. Hence, the petitioners filed a petition under Section 311 of Cr.P.C to recall PW.1 and PW.2 for cross-examination in Crl.M.P.No.1923 of 2016. Though this petition was filed in the year 2016, the same was dismissed by the impugned



order relying upon the Judgment of the Hon'ble Supreme Court reported in **2015(1) Scale 542 (Vinoth Kumar Vs. State of Punjab)** stating that if the examination in Chief is over, the cross examination should be completed on the same day. It was stated by the lower Court that the petitioners filed a petition only during argument and that therefore, the intention of the petitioners was only to delay the proceedings. As against the same, the petitioners have preferred the above petition.

5. From the facts it is seen that the evidence of PW.1 and PW.2 is relevant and failure to cross examine by the petitioners will result in serious prejudice to the case in defence. It is to be noted that the cross examination of PW.1 and PW.2 was only on 19.01.2015 and this petition is filed under Section 311 of Cr.P.C after a period of one year and therefore, the delay cannot be excused without any valid reason. In case of this nature, the Hon'ble Supreme Court has repeatedly held that the accused should be given fair opportunity to defend the case and the inconvenience caused to the prosecution will not carry much weight so as to deny the relief to the accused.

6. Having regard to the facts and circumstances of the case, this Court is inclined to allow the Criminal Original Petition subject to the following terms:

"The impugned order passed by the learned Judicial Magistrate, Lalgudi, dated 08.06.2017 in CrI.M.P.No.1923 of 2016 in C.C.No.54 of 2014 is set aside and the Criminal Original Petition is allowed subject to the condition that the petitioner shall cross examine the PW.1 and PW.2 on the date when the witnesses are available for cross examination, without seeking further adjournment on any ground."

7. The petitioner shall also pay a sum of Rs.5,000/- towards cost to the credit of the Hon'ble Chief Justice Relief Fund, Madras High Court, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

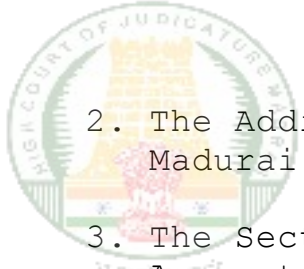
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The Sub Inspector of Police,
Siruganur Police Station,



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

3. The Section Officer,
Account Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.J. Madhu, ADVOCATE IN SR No.79617
trp
MK/JC/SAR-2/05.10.2017/3P/5C

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