



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD)No.12676 of 2017 and
CRL.M.P.(MD)No.8766 of 2017

Abimanyu

... Petitioner

Vs.

State represented through,
The Inspector of Police,
Karur Town Police Station,
Karur District.

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned order passed in C.M.P.No.2001 of 2017 in C.C.No.135 of 2012 on the file of the learned Judicial Magistrate Court No.I, Karur, and to set aside the same and to allow the direction petition.

For Petitioner : Mr.R.Karunanidhi
For Respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor.

O R D E R

This Criminal Original petition is filed to set aside the order passed by the learned Judicial Magistrate No.I, Karur, dated 11.05.2017, in C.M.P.No.2001 of 2017 in C.C.No.135 of 2012.

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

3. The petitioner is the accused in a criminal case registered in Crime No.105 of 2011 for the offence under Section 304(A) I.P.C. Though on the prosecution side, P.W.1 to P.W.4 were examined on 08.03.2017, it is admitted that the petitioner did not cross examine the witnesses on the ground that the petitioner was not well.

4. It appears that the petitioner filed a petition to recall the witnesses for cross examination under Section 311 of Cr.P.C in C.M.P.No.1671 of 2017. Though the said petition was allowed on the same day with a direction to pay the process fee within two



days, the petitioner admits that the fee was paid only on 08.05.2017. It was thereafter, the petitioner filed another petition in C.M.P.No.2001 of 2017 for the same relief. Since the petitioner has not paid the process fee in compliance of the earlier direction, the lower Court has observed that the petition was only to prolong the case and that the opportunity given by the Court to the petitioner had not been utilised properly. Ultimately, the petition was dismissed. Aggrieved by the same, the petitioner has preferred the above Criminal Original petition.

5. The learned counsel appearing for the petitioner submitted that the delay in paying process fee was by mistake, as the counsel did not notice that the petitioner had to pay the process fee within two days from the date of order.

6. Having regard to the facts and circumstances of the case, this Court is able to see that there is no inordinate delay in paying the process fee and the petitioner should be given an opportunity to cross examine the witnesses P.W.1 to P.W.3. Having regard to the nature of offences alleged as against the petitioner and the facts and circumstances of the case, this Court is inclined to allow this petition.

7. As a result, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate No.I, Karur, dated 11.05.2017, in C.M.P.No.2001 of 2017 in C.C.No.135 of 2012 is set aside. The petition filed by the petitioner in C.M.P.No.2001 of 2017 in C.C.No.135 of 2012 stands allowed subject to the condition that the petitioner shall cross examine the witnesses on the day when the witnesses appear, without seeking any further adjournment and also on payment of a sum of Rs.2,000/- (Rupees Two Thousand only) by way of cost to the credit of the District Legal Services Authority, Karur District. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

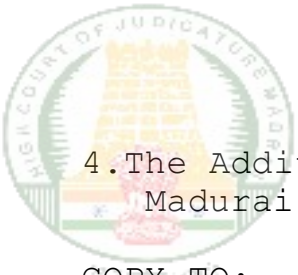
Sub Assistant Registrar

To

1.The Judicial Magistrate No.1, Karur.

2.-do- Thro' Chief Judicial Magistrate, Karur.

3.The Inspector of Police,
Karur Town Police Station,
Karur District.



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

COPY TO:

WEB COPY

The Officer Incharge,
District Legal Services Authority,
Karur District.

+1cc to M/S.R.Karunanidhi, Advocate SR.No. 81556

CRL.OP.(MD)No.12676 of 2017
03.10.2017

pmu
JM/KP/SAR 2/20.10.2017/3P/7C