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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.13652 of 2017

and

CrI.M.P(MD) .No.9186 of 2017

M.Sundar

: Petitioner

-Vs-

Staterep. by the Inspector of Police,
District Crime Branch,
Sivagangai.

(Crime No.30 of 2014)

: Respondent /Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to set aside the order in CrI.M.P(MD). No.2499 of 2017 in C.C.No.16 of 2015 dated 10.07.2017 on the file of the learned Judicial Magistrate No.II, Sivagangai and quash the same.

For Petitioner : Mr. V.Santhakumarasen

For Respondent : Mr.K.S. Duraipandian

Additional Government Pleader

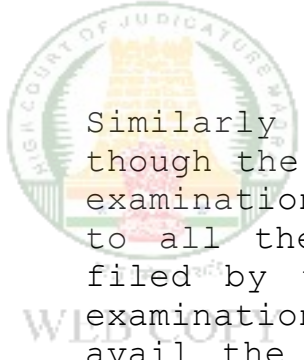
O R D E R

This petition is filed to set aside the order passed by the learned Judicial Magistrate No.II, Sivagangai in CrI.M.P(MD). No.2499 of 2017 in C.C.No.16 of 2015 dated 10.07.2017.

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

3. The petitioner is the sole accused in the proceedings in C.C.No.16 of 2015, pending on the file of the learned Judicial Magistrate No.II, Sivagangai. During enquiry, on the prosecution side PW.1 to PW.10 were examined. The Chief examination of all the witnesses was over on 01.06.2017. Though the matter was posted for the cross examination of all the witnesses, it appears that the petitioner has not availed the opportunity.

4. It is admitted that the matter was posted for the cross examination of PW.1 and PW.2 on 26.07.2016 and the matter was posted for the cross examination of PW.3 and PW.4 on 30.08.2016.



Similarly the cross examination of PW.5 to PW.10 was not done, though the matter was posted specifically for the purpose of cross examination of the witnesses on three occasions. After referring to all these facts, the lower Court has dismissed the petition filed by the petitioner under Section 311 of Cr.P.C for cross examination of all the witnesses, as the petitioner has failed to avail the opportunity which was given to him earlier. Having regard to the fact that the allegations against the petitioner are serious the petitioner should be given a fair opportunity to defend the his case. 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 in-convenience caused to the prosecution will not carry much weight so as to deny the relief to the accused. The Chief Examination of the witnesses was over only in the month June 2017. Since the present petition to recall the witnesses for the cross examination is filed without any long delay, this Court is convinced that the petitioner can be given one more opportunity to recall the witnesses for the purpose of cross examining them.

5. 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 No.II, Sivagangai, dated 10.07.2017 in Crl.M.P.No.2499 of 2017 in C.C.No.16 of 2015 is set aside and the Criminal Original Petition is allowed subject to the condition that the petitioner shall cross examine all the witnesses on the date when the witnesses are available for cross examination, without seeking further adjournment on any ground."

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No2,
Sivagangai.

2. The Inspector of Police,
District Court Office Branch,
Sivagangai.



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

+2cc to Mr. V.Santhakumarasen, Advocate Sr.No.82574

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VB/SV/MMS/SAR1/27/10/2017/3P/6C

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