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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD) No.14066 of 2017

and

CRL.M.P(MD) No.9430 of 2017

Abuthakeer

... Petitioner / Petitioner
/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

(in Crime No.142 of 2008)

...Respondent / Respondent
/ Complainant

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in order passed in Crl.M.P.No.7762 of 2016 in C.C.No.115 of 2008 dated 19.11.2016 on the file of the file of the learned Judicial Magistrate No.1, Kuzhithurai and set aside the same and permit the petitioners to cross examine the witnesses PW1, PW2 and PW3.

For Petitioner

: Mr.S.C.Herold Singh

For Respondent

: Mr.K.S.Durai Pandian

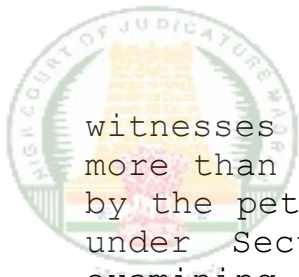
Additional Public Prosecutor

ORDER

The Criminal Original Petition is filed to set aside the order passed in Crl.M.P.No.7762 of 2016 in C.C.No.115 of 2008, dated 19.11.2016, on the file of the learned Judicial Magistrate No.1, Kuzhithurai and to permit the petitioners to cross examine the witnesses PW1, PW2 and PW3.

2.The petitioner is the sole accused in Cr.No.142 of 2008, which was registered for the alleged offences under Sections 279 and 337 IPC. After filing the charge sheet, the case altered into under Sections 279, 337 and 304(A) IPC and the same was taken on file by the learned Judicial Magistrate No.1, Kuzhithurai, in C.C.No.115 of 2008.

3.The witnesses were examined on the prosecution side on various days from 12.10.2009 to 13.07.2016. PW1 and PW2 were cross examined on 12.10.2009 and on 16.08.2010, PW3 was cross examined. PW7 was cross examined on 05.11.2013 and PW9 was cross examined on 08.01.2014. PW10 was cross examined on 13.08.2014. PW11 and on 13.07.2016 PW13 were cross examined. It can be seen that the Trial Court commenced the trial in the year 2009 and on various days, on the prosecution side,



witnesses were examined. Though the criminal case was pending for more than 7 years, after cross examining PW1, a petition was filed by the petitioner in CrI.M.P.No.7762 of 2016 in C.C.No.115 of 2008 under Section 311 of Cr.P.C., to reopen the case for cross examining PW1, PW2, PW3, PW7, PW9, PW11 and PW13.

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4.Since there was no explanation for the long delay in filing the petition for cross examining the witnesses PW1 to PW3, the Trial Court allowed the petition, insofar as PW7, PW9, PW11 and PW13 are concerned. The Trial Court dismissed the petition insofar as PW1, PW2 and PW3 are concerned, only because of the long delay and failure to explain the delay.

5.Though this Court is also not able to see any legal infirmity in the order passed by the Trial Court, having regard to the peculiar circumstances of this case and the nature of offences alleged to have been committed by the petitioner, this court is inclined to give one more opportunity to the petitioner in the interest of justice, subject to terms. Hence, the Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District in CrI.M.P.(MD)No.7762 of 2016 in C.C.No.115 of 2008 is set aside. The petition filed by the petitioner in CrI.M.P.(MD)No.7762 of 2016 in C.C.No.115 of 2008 stands allowed, subject to the condition that the petitioner shall deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) to the credit of the Honourable Chief Justice Relief Fund account maintained by this Bench within a period of three weeks from the date of receipt of a copy of this order. The petitioner is further directed to cross examine the witnesses on the date when they are made available without asking any further adjournment.

6.With the above direction, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Kuzhithurai.

2.The Inspector of Police,
Kanyakumari District.



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.S.C.Herold Singh, Advocate SR.No. 83206

CRL.OP.(MD) No.14066 of 2017
23.10.2017

cmr
JM/SV MMS/SAR 2/02.11.2017/3P/6C