



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

CRL.O.P.(MD).No.14184 of 2017 and
CRL.M.P.(MD)No.9485 of 2017

Palsamy

..Petitioner/Petitioner/Sole Accused

Vs.

The State,
The Inspector of Police,
Manur Police Station,
Tirunelveli District.
(Crime No.160 of 2016)

..Respondent/Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the order passed in Crl.M.P.No.132 of 2017 in S.C.No.629 of 2016, dated 10.08.2017 on the file of the learned Principal Assistant Sessions Judge, Tirunelveli, and to set aside the same and to permit the petitioner to cross examine the witnesses of P.W.1, P.W.2, P.W.4, P.W.5 and P.W.7 to P.W.13.

For Petitioner : Mr.M.Jegadeesha Pandian

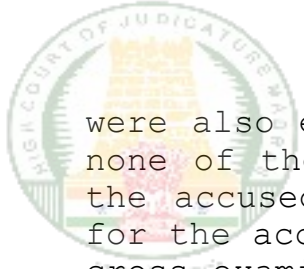
For Respondent : Mr.K.S.Durai Pandiyan,
Additional Public Prosecutor

ORDER

This Criminal Original petition is filed to set aside the order passed in Crl.M.P.No.132 of 2017 in S.C.No.629 of 2016, dated 10.08.2017 on the file of the learned Principal Assistant Sessions Judge, Tirunelveli and to permit the petitioner to cross examine the witnesses P.W.1, P.W.2, P.W.4, P.W.5 and P.W.7 to P.W.13.

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 criminal case. The petitioner was charged for the offences under Sections 294(b), 307 and 506(ii) of I.P.C., on the basis of the complaint lodged by the complainant. After commencement of trial, it appears that P.W.1 to P.W.5 were examined in chief on 09.02.2017 and other witnesses



were also examined in chief on 16.02.2017 and 24.04.2017. However, none of the witnesses were cross examined by the petitioner who is the accused. It is also the fact that on 09.02.2017, the counsel for the accused was present before the Court and at his request, the cross examination of P.W.1 to P.W.5 was deferred and the matter was adjourned to 13.02.2017 for the said purpose. Even though all the witnesses were present on 13.02.2017, it is admitted that the petitioner's counsel did not cross examine. It was in the month of June, 2017, the petitioner has filed the petition in CrI.M.P.No.132 of 2017 in S.C.No.629 of 2016 to recall and cross examine P.W.1, P.W.2, P.W.4, P.W.5 and P.W.7 to P.W.13. The trial Court dismissed the petition on the ground that the petitioner has not filed the petition at appropriate time and that his intention was only to win over the witnesses. Challenging the order passed by the trial Court, the above Criminal Original petition is filed.

4. The petitioner is charged for serious offences. The evidence of P.W.1, P.W.2, P.W.4, P.W.5 and P.W.7 to P.W.13 are crucial and in case the witnesses are not cross examined, it will certainly cause serious prejudice to the petitioner's defence. The Hon'ble Supreme Court has repeatedly held that a fair opportunity should always be given to the accused and such opportunity cannot be denied mainly on the ground of inconvenience to prosecution or delay. The law is also settled that inconvenience or hardship that may be caused to the prosecution cannot be a reason to deny such opportunity to the petitioner. Long delay in filing the petition for cross examining the witnesses may in some cases cause serious prejudice to the case of the prosecution.

5. In the present case, the witnesses were examined in chief in the month of February, 2017 and of course, the petitioner failed to utilise the opportunity though the cross examination was specifically adjourned to 13.02.2017. The petition under Section 311 of Cr.P.C., has been filed in the month of June 2017 and this Court does not find that the delay is fatal and causes serious prejudice to the case of the prosecution. It is not even the case of prosecution before the trial Court that the failure to cross examine was with an intention to win over the witnesses. No counter has been filed. Even in the objection filed by the learned Additional Public Prosecutor before the trial Court, it was not suggested that failure to cross examine the witnesses was with an intention to win over the witnesses.

6. In such circumstances, this Court is not able to sustain the order of the trial Court. Hence, the Criminal Original petition is allowed and the order passed by the learned Principal Assistant Sessions Judge, Tirunelveli, in CrI.M.P.No.132 of 2017 in S.C.No.629 of 2016, dated 10.08.2017, is set aside and the petition filed by the petitioner in CrI.M.P.No.132 of 2017 in S.C.No.629 of 2016 stands allowed and the petitioner is permitted to cross examine the witnesses P.W.1, P.W.2, P.W.4, P.W.5 and P.W.7 to P.W.13 on the day when the witnesses are available for cross examination, without



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taking any adjournment on any ground. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORD)

/True Copy/

WEB COPY

Sub Assistant Registrar

To

1.The Principal Assistant Sessions Judge,
Tirunelveli.

2.The Inspector of Police,
Manur Police Station,
Tirunelveli District.

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

+1cc to Mr.M.JEGADEESHA PANDIAN Advocate in SR. No. 83591

PMU

JS/MR.KKR/SAR.3/7.11.2017/3P-5C

Cr1.O.P. (MD) .No.14184 of 2017
24.10.2017