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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

CRL.O.P. (MD) .No.14434 of 2017
and
CRL.M.P. (MD) No. 9617 of 2017

Vijayadhas Petitioner

Vs.

State rep. by,
The Inspector of Police,
Thuckalai Police Station,
Kanyakumari 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 by the learned Judicial Magistrate, Padmanabapuram, in C.M.P.No.1421 of 2017 in C.C.No.181 of 2011, dated 25.04.2017 and to set aside the same and to direct the learned Judicial Magistrate, to provide an opportunity to recall and reexamine P.W.1 within the time stipulated by this Court.

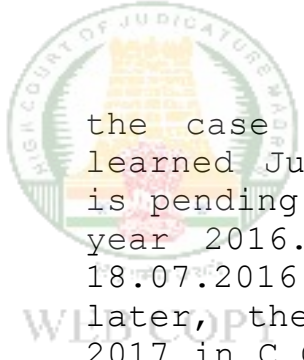
For Petitioner : Mr.M.R.Sreenivasan
For Respondent : Mr.K.S.Durai Pandiyan,
Additional Public Prosecutor.

ORDER

This Criminal Original petition is filed to set aside the order passed by the learned Judicial Magistrate, Padmanabapuram, in C.M.P.No.1421 of 2017 in C.C.No.181 of 2011, dated 25.04.2017 and to direct the learned Judicial Magistrate, to provide an opportunity to recall and re-examine P.W.1 within a time stipulated by this Court.

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

<https://hcservices.ecourts.gov.in/hcservices/>
3. The petitioner is the sole accused in a criminal case registered in Crime No.763 of 2008. After filing of Charge Sheet,



the case was taken on file in C.C.No.181 of 2011 before the learned Judicial Magistrate, Padmanabhapuram. Though the matter is pending from the year 2011, the trial was commenced only in the year 2016. It is stated that P.W.1 was examined in chief on 18.07.2016. However, P.W.1 was not cross examined. Eight months later, the petitioner filed an application in C.M.P.No.1421 of 2017 in C.C.No.181 of 2011 under Section 311 of Cr.P.C., to recall P.W.1 for cross examination. Stating that the petitioner filed the application with an inordinate delay of eight months without any acceptable reasons for the delay the same was dismissed by the lower Court, by an order dated 25.04.2017. Challenging the said order, the petitioner has preferred the above Criminal Original petition.

4. Having regard to the fact that the petitioner has given an explanation that the non cross examination of P.W.1 was neither willful nor wanton, but only due to the absence of his counsel owing to illness and that the counsel for the petitioner himself filed the petition under Section 311 of Cr.P.C., this Court is inclined to allow this petition, subject to terms, as reasonable opportunity should be given to the accused to defend the criminal case.

5. The Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate, Padmanabhapuram, in C.M.P.No.1421 of 2017 in C.C.No.181 of 2011, dated 25.04.2017 is set aside and the petition filed by the petitioner under Section 311 of Cr.P.C., in C.M.P.No.1421 of 2017 in C.C.No.181 of 2011 stands allowed subject to the condition that the petitioner pays a sum of Rs.3,000/- (Rupees Three Thousand only) towards costs to the credit of the Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai and on condition that the petitioner shall cross examine P.W.1 on the date when the witness is available, without seeking any further adjournment for any other reasons. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Padmanabhapuram.

2. The Inspector of Police,
Thuruthi Police Station,
Kanyakumari District.



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

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

+1cc to Mr.M.R.Sreenivasan, Advocate Sr.No.84000

PMU

VB/SV/MMS/SAR4/08/11/2017/3P/6C

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