



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.12.2017
CORAM
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.O.P.(MD) No.16004 of 2017
and
CRL.M.P.(MD)No.10606 of 2017

Rajan ... Petitioner/ Petitioner / Accused

-Vs-

The State represented by
The Inspector of Police,
Taluk Police Station,
Tirunelveli District. ...Respondent/Respondent/ Complainant

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in Cr.M.P.No.3950 of 2017 in C.C.No.270 of 2013 dated 05.09.2017 on the file of the learned Judicial Magistrate No.3, Tirunelveli.

For Petitioner : Mr.S.M.Mohan Gandhi
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Cr.M.P.No.3950 of 2017 in C.C.No.270 of 2013 dated 05.09.2017 on the file of the learned Judicial Magistrate No.3, Tirunelveli.

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 the proceedings in C.C.No.270 of 2013. As against the petitioner, originally, a case was registered in Cr.No.140 of 2013 for the offences punishable under Sections 279, 337 and 304(A) IPC and after filing the charge sheet, the case was taken on file by the learned Judicial Magistrate No.3, Tirunelveli. in C.C.No.270 of 2013.

4.It is stated that the petitioner, after closure of evidence on prosecution side, filed a petition in Cr.M.P.No.3950 of 2017 in C.C.No.270 of 2013 under Section 311 of Cr.P.C., to recall PW1 to



PW8 for cross examination. This petition was dismissed on the ground of delay. As against the order of dismissal, the petitioner has come forward with this petition.

5. The learned Counsel for the petitioner submitted that the delay has been properly explained and that an opportunity should be given to the petitioner to prove his innocence. It is true that the witnesses originally were examined and the petition has been filed by the petitioner with a delay of nearly two years to recall PW1 to PW8 for cross examination. It is true that, even in the petition before the lower Court, the petitioner has not stated any specific reason or explaining the circumstances by which he was prevented from filing a petition to recall the witnesses for cross examination. The learned Counsel for the petitioner submitted that the delay was on account of the conduct of the Advocate who failed to promptly conduct the case.

6. Having regard to the nature of case and settled position of law that a fair opportunity should be given to the accused in defending the case, this Court is inclined to entertain this petition subject to terms.

7. As a result, the Criminal Original Petition is allowed and the order dated 05.09.2017 made in Cr.M.P.No.3950 of 2017 in C.C.No.270 of 2013 on the file of the learned Judicial Magistrate No.3, Tirunelveli, is set aside and the petition in Cr.M.P.No.3950 of 2017 in C.C.No.270 of 2013 on the file of the learned Judicial Magistrate No.3, Tirunelveli, stands allowed subject to the condition that the petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the Honourable Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai and on further condition that the petitioner should cross examine PW1 to PW8 on the date when they are available, without seeking any further adjournments on any other ground. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.3, Tirunelveli.

2. The Inspector of Police,
Taluk Police Station,

<https://hcservices.courts.gov.in/eservices/> District.



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

4. The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

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

+1cc to Mr.S.M.Mohan Gandhi, Advocate Sr.No.91221

CMR

VB/SV/MMS/SAR3/26/12/2017/3P/7C

CRL.O.P.(MD) No.16004 of 2017
05.12.2017