



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.16143 of 2017
and
CRL.M.P. (MD) No.10685 of 2017

Gunasekaran

... Petitioner/Petitioner/Accused

-Vs-

The State represented by
The Sub Inspector of Police,
Rayappanpatti Police Station,
Theni District.
(Crime No.37/2012)

...Respondent/Respondent/ Complainant

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of the learned Judicial Magistrate, Uthamapalayam in Cr.M.P.No.5980 of 2017 in C.C.No.376 of 2012 and set aside the order dated 18.09.2017.

For Petitioner : Mr.S.Mahendrapathy

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records of the learned Judicial Magistrate, Uthamapalayam in Cr.M.P.No.5980 of 2017 in C.C.No.376 of 2012 and set aside the order dated 18.09.2017.

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

3.The petitioner is the accused in Cr.No.37 of 2012, which was registered for the offences punishable under Section 435 IPC and after filing the charge sheet, the case was taken on file by the learned Judicial Magistrate, Uthamapalayam in C.C.No.376 of 2012.



4.It is stated that PW1 and PW2 were not cross examined, even though, they were examined in chief on 08.09.2016. It is further stated that PW3 to PW8 were examined in chief on subsequent days and they were also not cross examined by the petitioner. Hence, the petitioner has filed a petition before the lower Court, under Section 311 Cr.P.C., in Cr.M.P.No.5980 of 2017 in C.C.No.376 of 2012, for cross examination of PW1 to PW8. The said petition was dismissed only on the ground that the petitioner has not cross examined the witnesses, despite an opportunity was given to him and that the petitioner has not explained the delay, which occurred in filing the petition.

5.The petitioner has been charged for the offences under Section 435 IPC. It is to be noted that the witnesses PW1 to PW8 were examined between 08.09.2016 and 06.06.2017. There is no material to indicate that serious prejudice will be caused to the respondent, in case the witnesses were allowed to cross examine by the petitioner. Having regard to the nature of offences alleged to have been committed by the petitioner and the facts and circumstances of the case, this Court is inclined to allow the petition subject to terms.

6.As a result, the Criminal Original Petition is allowed and the order dated 18.09.2017 made in Cr.M.P.No.5980 of 2017 in C.C.No.376 of 2012 on the file of the learned Judicial Magistrate, Uthamapalayam is set aside and the petition in Cr.M.P.No.5980 of 2017 in C.C.No.376 of 2012 on the file of the learned Judicial Magistrate, Uthamapalayam, 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, 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 (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Uthamapalayam.

2. The Sub Inspector of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Rayappanpatti Police Station,
Theni 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.

+ 1 CC TO Mr.S.MAHENDRAPATHY, ADVOCATE IN SR No. 91301

CMR

TE/MR-KKR/SAR-4 : 26/12/2017 : 3P/6C

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