



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.16895 of 2017 and
CRL.M.P.(MD)No.11128 of 2017

1.Raja
2.Ananthan Konar
3.Pasupathi : Petitioners/Petitioners/1 to 3 Accused

-Vs-

The State represented by
The Inspector of Police,
All Women Police Station,
Uthamapalayam, Theni District.
(in Crime No.20 of 2011) : Respondent/Respondent/Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P.No.6087 of 2017 in C.C.No.207 of 2012 dated 30.10.2017 by the learned Judicial Magistrate, Uthamapalayam and to set aside the same by allowing this Criminal Original Petition.

For Petitioners : Mr.B.Rajesh Saravanan
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

O R D E R

The Criminal Original Petition is filed to call for the records pertaining to the order passed in Cr.M.P.No.6087 of 2017 in C.C.No.207 of 2012 dated 30.10.2017 by the learned Judicial Magistrate, Uthamapalayam and to set aside the same by allowing this Criminal Original Petition.

2.It appears that the trial of the case commenced in the year 2014. PW5 was examined on 17.02.2015 and PW6 was examined on 13.10.2015. Though, the learned Counsel for the petitioner was present, before the lower Court, at the time of examining PW5 and PW6, they were not cross examined and no application was filed immediately. Only after a lapse of 3 years, an application was filed under Section 311 of Cr.P.C., to recall PW5 and PW6 for cross examination. Since, there was no explanation for the delay of more than three years and the petitioners have not taken any steps for availing the opportunity to cross examine, the lower Court dismissed the petition, observing that the unexplained delay will disable the petitioners for such relief.



3. This Court, considering the facts and the order passed by the lower Court as well as the submission of the learned Counsel for the petitioners is of the view that an opportunity can be given to petitioners. It is basic that the accused in a criminal case is entitled to a fair opportunity in defending the case. In all cases, where a petition filed under Section 311 of Cr.P.C., it is the discretion of the lower Court. However, the discretion has to be exercised keeping in mind the ends of justice. Mere delay may not in all cases be fatal.

4. In such circumstances, considering the various factors, this Court is inclined to allow this petition subject to terms.

5. In result, the Criminal Original Petition is allowed and the order passed in Cr.M.P.No.6087 of 2017 in C.C.No.207 of 2012 dated 30.10.2017 by the learned Judicial Magistrate, Uthamapalayam is set aside and the petition in Cr.M.P.No.6087 of 2017 in C.C.No.207 of 2012 before the learned Judicial Magistrate, Uthamapalayam stands allowed on condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to PW1 within a period of four weeks from the date of receipt a copy of this order and on further condition that the petitioners should cross examine PW5 to PW6 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 (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Uthamapalayam.

2. The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.

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

+ 1 CC TO Mr.B.RAJESH SARAIVANAN, ADVOCATE IN SR No. 91856

CMR

TE/GT/SAR-3 : 18/01/2018 : 2P/5C

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