



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2017
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.16984 of 2017
and
Crl.M.P (MD) No.11176 of 2017

Marimuthu

... Petitioner

Vs

The State represented by
The Inspector of Police,
Srivilliputhur Police Station,
Virudhunagar District.
(Crime No.32/2011)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in Cr.M.P.No.6915 of 2017 in C.C.No.258 of 2011 on the file of the Learned Judicial Magistrate No.II, Srivilliputhur, dated 30.10.2017.

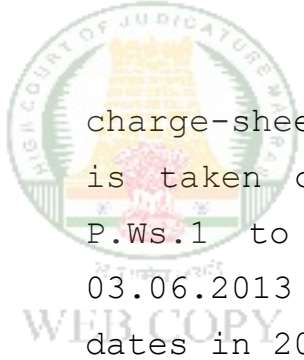
For Petitioner	: Mr.A.Jayaramachandran
For Respondent	: Mr.K.S.Duraipandian Additional Public Prosecutor

O R D E R

This Criminal Original petition is filed to set aside the order passed in Cr.M.P.No.6915 of 2017 in C.C.No.258 of 2011 by the Learned Judicial Magistrate No.II, Srivilliputhur.

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

3. The Petitioner states that a complaint was lodged in Crime No.32 of 2011 for the alleged offences punishable under sections 457, 380 of IPC r/w Section 75 of IPC. After investigation, final



charge-sheet was filed showing the petitioner as accused No.2 and it is taken on filed in C.C.No.258 of 2011. It is submitted that P.Ws.1 to 3 were examined on the side of the prosecution on 03.06.2013 and subsequently other witnesses were examined on various dates in 2014 and finally PW 9 was examined on 12.06.2015.

4.It appears that the petitioner has filed a petition under section 311 of Cr.P.C., in Cr.M.P.No.7501 of 2014 to recall PWs1 to P.W.5 for cross-examination of witnesses and this petition has been allowed. The petitioner also cross-examined all the witnesses Pws.1 to PW 5. It was thereafter, the petitioner filed Cr.M.P.No.6915 of 2017 seeking permission to recall and cross examined PW6 and PW8. The said application was dismissed by the trial court on the ground that the petitioner has filed this application belatedly, nearly after 4 years from the date on which the witnesses were examined in-chief and that the application is only to delay the proceedings. Aggrieved by the same, the Criminal Original Petition has been filed.

5.It is true that the application under section 311 of Cr.P.C. have been filed with some delay. However, it is not four years as the witnesses P.W.6 and P.W.8 were examined only in September, 2014 and November, 2014 respectively. It is also admitted that the petitioner filed an earlier application to recall other witnesses and failed to file a petition earlier to recall P.W.6 and P.W.8 and that the petitioner has not explained the reason for not filing the petition earlier.

6.From the reading of the evidence of P.W.6 and P.W.8, the petitioner is likely to be convicted only on the basis of evidence of P.W.6 and P.W.8 which is about the confession statement given by the petitioner. Having regard to the peculiar circumstances of the case, this court is of the view that a fair opportunity should be given to the petitioner. The allegation against the petitioner is that he has stolen the TV and DVD player worth Rs.2000/-. It is in



the circumstances, this court is inclined to allow this Criminal Original Petition.

7. In the result, the order passed by the learned Judicial Magistrate No.II, Srivilliputhur, dated 30.10.2017 in Cr.M.P.No.6915 of 2017 in C.C.No.258 of 2011 is set aside and the application filed by the petitioner before the lower court in Cr.M.P.No.6915 of 2017 in C.C.No.258 of 2011 stands allowed subject to the condition that the petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the Legal Aid Services Committee attached to the Madurai Bench of Madras High Court, Madurai, within a period of two weeks from the date of receipt of the copy of this Order.

8. Accordingly, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Srivilliputhur.
2. The Inspector of Police,
Srivilliputhur Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Legal Aid Service Committee,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.A.JAYARAMACHANDRAN, Advocate SR.No.91901.

CRL.O.P.(MD) No.16984 of 2017
11.12.2017

pnn / am