



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD).No.17675 of 2017

and

CRL.MP(MD). No.11559 of 2017

Bhoopathi

... Petitioner/Petitioner/ Sole Accused

Vs.

State represented by,
The Inspector of Police,
Taluk Police Station,
Kumbakonam,
Thanjavur District.

... Respondent/Respondent/ Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the record and set aside the order dated 21.11.2017 made in Crl.R.C.No.30 of 2017 on the file of the learned Additional District and Sessions Court (Fast Track) Kumbakonam, Thanjavur District by confirming the order dated 23.05.2017 made in Crl.M.P.No.864 of 2017 on the file of the learned Chief Judicial Magistrate, Kumbakonam, Thanjavur District and allow the above petition.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.K.S.Duraipandian

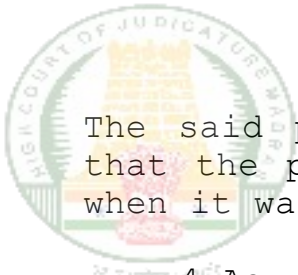
Additional Public Prosecutor.

ORDER

This Criminal Original petition is filed to set aside the order passed by the learned Additional District and Sessions Court (Fast Track) Kumbakonam, Thanjavur District in Crl.R.C.No.30 of 2017 confirming the order passed by the Chief Judicial Magistrate, Kumbakonam, Thanjavur District in Crl.M.P.No.864 of 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 sole accused in the criminal case in S.C.No.80 of 2015 pending on the file of the learned Chief Judicial Magistrate, Kumbakonam. The said case was pending for the offences punishable under Sections 294(b) and 307 IPC. It appears that after framing the charges, the prosecution witnesses were examined. The petitioner was not able to cross examine some of the prosecution witnesses and after a lapse of one year, he appears to have filed a petition before the learned Chief Judicial Magistrate, Kumbakonam in Crl.M.P.No.864 of 2017 under section 311 of Cr.P.C.



The said petition was dismissed on the ground of delay holding that the petitioner has failed to avail the opportunity in time, when it was available to him.

4.As against the said order, the petitioner has preferred a revision in Crl.R.C.No.30 of 2017 before the learned Additional District and Sessions Court (Fast Tract), Kumbakonam. The said revision petition was also dismissed mainly on the ground of delay and the revision petition is filed only to drag on the proceedings.

5.It is well settled that a in a criminal case, fair and reasonable opportunity should be given to the parties to defend their case. In this case, it is true that the petitioner has not availed the opportunity to cross examine the witnesses. Some of the witnesses were also cross examined by the petitioner and this petition is filed to recall those witnesses, who have already been examined by the petitioner. Having regard to the nature of charges framed against the petitioner and the fact that the delay in filing the petition, this court has come to the conclusion that the petitioner has purposely avoided to cross examine the witnesses with an ulterior motive. A reasonable opportunity should be given to the parties in all cases. It is observed by the learned Judicial Magistrate, Kumbakonam that the petitioner could not be cross examined the witnesses, on account of his counsel's non appearance.

6.The learned counsel for the petitioner further undertakes that the cross examination of the witnesses will be done on a particular day, when the witnesses are available, without seeking any further adjournments.

7. In view of the same, this court is inclined to allow this petition, on payment of cost of Rs.10,000/-. Accordingly, the order passed by the court below in Crl.R.C.No.30 of 2017 is set aside. The application in Crl.M.P.No.864 of 2017 stands allowed on condition that the petitioner shall deposit a sum of Rs.10,000/- to the credit of "The Chief Justice Relief Funds" permitting the petitioner to cross examine the witnesses on the day when the witnesses are available without seeking any unnecessary adjournments on any other grounds.

8.With the above direction, the Criminal Original Petition is allowed. The connected Crl.M.P is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1.The Additional District and Sessions Judge,
Fast Track Court,
Kumbakonam.

2.The Chief Judicial Magistrate,
Tanjavur at Kumbakonam.

3.The Inspector of Police,
Taluk Police Station,
Kumbakonam.

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

+1cc to M/S.B.Jameel Arasu, Advocate SR.No. 94601

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21.12.2017

pnn/cmr
JM/SV MMS/SAR 1/22.12.2017/3P/6C