



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH**Crl.O.P. (MD) No.2583 of 2017****and****Crl.M.P. (MD) No.1984 of 2017**

M.Mansoor Alikhan : Petitioner/Petitioner/Sole Accused

-vs-

State Rep. by,
The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District
(In Cr.No.320/11) : Respondent/Respondent/Complainant

Prayer: Petition is filed under Section 482 of Code of Criminal Procedure to call for the records and to set aside the order passed by the Judicial Magistrate Court, Rajapalayam in Crl.M.P.No.10100 (a) of 2016 in C.C.No.184 of 2011 on 25.11.2016 and allow this Criminal Original Petition.

For Petitioner : Mr.G.Marimuthu
For Respondent : Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

The petitioner is facing prosecution in C.C.No.184 of 2011 for offence under Section 304 (A) of Indian Penal Code before the Judicial Magistrate, Rajapalayam. The prosecution examined ten witnesses on various dates and they were not cross-examined by the petitioner. Therefore, the petitioner has filed a criminal M.P.No.10100(a) of 2016 in C.C.No.184 of 2011 for re-calling all the witnesses, which was dismissed by the trial court on 25.11.2016, challenging which, the petitioner is before this court.

2.Today, Mr.A.Ramkumar, Special Sub-Inspector of Police, Rajapalayam North Police Station is present.

3.Heard Mr.G.Marimuthu, learned counsel appearing for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate appearing for the respondent.

4. It is seen that the examination of the prosecution witnesses began with the examination of P.W.1 on 21.01.2013 and the last witness, namely, P.W.10 was examined on 23.11.2016. None of the witnesses were cross examined by the accused / petitioner for the reasons best known to him. After the accused was questioned under Section 313 of Criminal Procedure Code, he filed the above



petition under Section 311 of Criminal Procedure Code to re-call all the ten witnesses without even giving any good reasons therein. Therefore, this court does not find any infirmity in the order passed by the trial court warranting interference.

5.Learned Counsel for the petitioner submitted that P.W.1 and P.W.2 are eyewitnesses and P.W.10 is the Investigation Officer, therefore, the petitioner may be given one more opportunity to cross examine those witnesses, otherwise, serious prejudice will be caused to the case of the petitioner.

6.Accepting the submission, this Court directs the trial Court to ascertain from the police about the availability of P.W.1, P.W.2 and P.W.10. If they are dead or if they are settled elsewhere or if they are sick, they need not be recalled. If they are available, on a date fixed by the learned Magistrate, they shall be recalled. On their appearance, the petitioner shall pay a cost of Rs.1000/- (Rupees One Thousand only) each to P.W.1 and P.W.2. The learned Magistrate shall ensure that P.Ws.1, 2 and 10 are furnished their chief examination and their memory is refreshed. Only thereafter, they can be subjected to cross examination by the petitioner / accused. On the appearance of P.W.1, 2 and 10, if the petitioner does not cross-examine them, even if there is a boycott of the Court, the petitioner will forfeit his right of cross-examination. If P.W.1 and P.W.2 turn hostile the trial Court can proceed with the appreciation of evidence given in chief.

7.With the above directions, this Criminal Original Petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate,
Rajapalayam.
- 2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/R.G.MARIMUTHU, Advocate, SR.NO:13803

SJ/MR

SVA/BS/20.03.2017/2P/5C

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Order made in

Cr1.O.P. (MD) No.2583 of 2017

09.03.2017