



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.3805 of 2017
and
Crl.M.P. (MD) No.2802 of 2017

Thanislas : Petitioner/A1

Vs.

1. The Sub-Inspector of Police,
Kulasekaram Police Station,
Kulasekaram,
Kanyakumari District. : 1st Respondent/Complainant
2. Thiru.Aravintha Kumar : 2nd Respondent/Defacto
Complainant

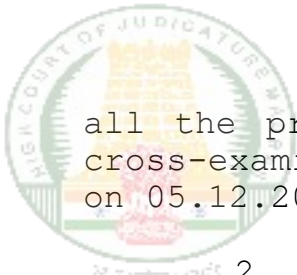
Prayer : Criminal Original Petition is filed under Section 482 r/w 401 of the Code of Criminal Procedure praying to set aside the order dated 05.12.2016 made in C.C.No.248 of 2008 on the file of the Judicial Magistrate Court, Padmanabhapuram and allow this Criminal Original Petition.

For Petitioner : Mr.N.S.Rama Krishnadass

For Respondent No.1 : Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

On the complaint lodged by one Aravintha Kumar, the respondent police registered a case in Crime No.88 of 2008 and after completing the investigation, filed a charge sheet in C.C.No.248 of 2008 before the Judicial Magistrate Court, Padmanabhapuram against three accused for offences under Sections 447, 427 and 379 of the Indian Penal Code r/w Section 511 of the Indian Penal Code. The prosecution commenced with the examination of P.W.1 to P.W.4 on 26.08.2011. The other witnesses were also examined on subsequent dates. When the case was posted for the examination of L.W.8 and L.W.9, the accused filed C.M.P.No.7111 of 2016 in C.C.No.248 of 2008 under Section 311 of the Code of Criminal Procedure for recalling



all the prosecution witnesses on the ground that they have to be cross-examined. The said petition was dismissed by the Trial Court on 05.12.2016, challenging which, the accused is before this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) appearing for the first respondent.

3. It is seen that this petition has been filed based on the docket order passed by the Trial Court in C.C.No.248 of 2008, that is the main case docket. Therefore, this Court called for the detailed order passed by the Trial Court in C.M.P.No.7111 of 2016 in C.C.No.248 of 2008 on 05.12.2016. The learned Magistrate has sent the order dated 05.12.2016, which reads as under:

"Originally the prosecution case commenced on 26.08.2011. On the very same day Pw1 to Pw4 were examined on the side of prosecution. Subsequently on 26.09.2011 Pw5 to Pw7 was examined. Now the case posted for examination of LW8 and LW9. The reason stated in the 311 Cr.Pc. application, that at the time of examination of Pw1 to Pw4 the concerned counsel is not well. Hence they are not able to cross examination of the above said witnesses. On perusal of records Pw1 to Pw4 were examined on 26.08.2011. After lapse of 6 years 311 Cr.P.C. filed on the side of petitioners/accused. The reason stated in the said application is not acceptable one. However, it is morethan enough time in the hand of petitioner, but they never used the opportunity in time. As stated supra this application has been filed belated stages. The averments made in the 311 Cr.P.C. application is not valid under law. Hence upon the considering the all facts and the delayed application filed without reasoning cause. Resulted the petition is dismissed. No cost."

4. The learned counsel for the petitioner submitted that one opportunity should be given to the petitioner to cross-examine the witnesses.

5. It is seen that the witnesses were examined in the year 2011, but, for six years, the accused did not choose to cross-examine them. It is not known whether those witnesses may remember the case even at this distant point of time. In **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542**, the Hon'ble Supreme Court has very clearly stated that witnesses should be cross-examined on the day they are examined in chief. That apart, even in the petition filed by the accused under Section 311 of the Code of Criminal Procedure in C.M.P.No.7111 of 2016, they have not given any good reasons for recalling the prosecution witnesses. Therefore, this Court does not find any infirmity in the order passed by the Trial Court.



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6. In the result, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Padmanabhapuram.
2. The Sub-Inspector of Police,
Kulasekaram Police Station,
Kulasekaram,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

TE/KP : 17/04/2017 : 3P/4C

Order made in
Crl.O.P.(MD)No.3805 of 2017 and
Crl.M.P.(MD)No.2802 of 2017
Dated: 06.04.2017