



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.05.2017

DELIVERED ON: 08.06.2017

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.20863 of 2016 & Crl.M.P. (MD) No.10627 of 2016

Siva

...Petitioner

vs.

The State of Tamil Nadu
represented by the Inspector of Police
Aralvoimozhi Police Station
Aralvoimozhi
Kanyakumari District
(Cr. No.853 of 2011)

...Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 11.07.2016 passed in Crl.M.P. No.2705 of 2016 in C.C. No.74 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Boothapandi.

For petitioner :Mr. R. Murugan

For respondent :Mr. K. Anbarasan
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been preferred seeking to set aside the order dated 11.07.2016 passed in Crl.M.P. No.2705 of 2016 in C.C. No.74 of 2014 on the file of the District Munsif Court-cum-Judicial Magistrate Court, Boothapandi.

2.The petitioner is facing trial in C.C. No.74 of 2014 before the District Munsif-cum-Judicial Magistrate Court, Boothapandi, for offences under Sections 341, 294(b), 324 and 506(ii) IPC. During the course of trial, the prosecution examined one Dr. Muthuramalingam, who had treated the injured victim as P.W. 4 on 05.10.2015. After Dr. Muthuramalingam, P.W.4 was examined-in-chief, the petitioner/accused did not cross-examine him. Thereafter, the petitioner/accused filed Crl.M.P. No.2705 of 2016 in C.C. No.74 of 2014 seeking to recall Dr. Muthuramalingam, P.W.4, which was dismissed by the Trial Court on 11.07.2016, challenging which, the petitioner/accused is before this Court.



3. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Crl. Side) appearing for the respondent/State.

4. The learned counsel for the petitioner/accused submitted that on the day when Dr. Muthuramalingam, P.W.4, was examined-in-chief, the Trial Court counsel was not in town and therefore, he was not cross-examined; hence, an opportunity should be afforded to the petitioner/accused to recall Dr. Muthuramalingam, P.W.4, lest, grave injustice would be caused to him.

5. Per contra, the learned Government Advocate (Crl. Side) refuted the contentions.

6. This Court gave its anxious consideration to the rival submissions.

7. In the petition filed under Section 311, Cr.P.C., the petitioner/accused has averred as follows:

"On the examination of prosecution witness P.W.4, the advocate has gone to out of station for his personal matter. I could not cross examine the above said prosecution witness in the above said day."

8. At this juncture, it is apropos to refer to the last proviso to Section 309 (2) Cr.P.C., which reads as follows:

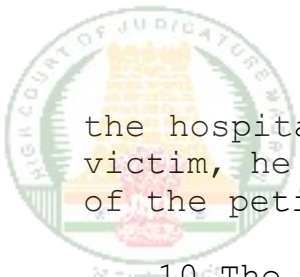
"Provided also that--

a. no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b. the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c. where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

9. In the case at hand, Dr. Muthuramalingam, P.W.4, was examined-in-chief on 05.10.2015 and the petition under Section 311, Cr.P.C. was filed only on 04.04.2016 and the averments made in the said petition are very cavalier. The petitioner/accused is proceeding as if he has got an inviolable right to recall any witness on his mere asking. It is worth pointing out that Dr. Muthuramalingam, P.W.4, is a Government doctor, who is required to attend to poor patients in



the hospital. For having committed the sin of treating the injured victim, he cannot be asked to come to the Court at the beck and call of the petitioner/accused.

10. The Supreme Court, in **Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220]**, has held in unequivocal terms that a witness should be cross-examined on the same day he is examined-in-chief. That apart, in **A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649]**, the Supreme Court has held that a petition under Section 311, Cr.P.C. cannot be allowed on the mere asking of the accused.

11. Further, when Section 309, Cr.P.C., clearly states that just because the pleader of a party is engaged in another Court, that itself cannot be a reason for adjourning a case, the facts in this case are still worse inasmuch as the petitioner/accused has contended that his advocate was away from town and therefore, P.W.4 could not be cross-examined. Had the petition under Section 311, Cr.P.C., been filed within a reasonable time, then, the *bona fides* of the petitioner/accused can be gauged. As stated above, P.W.4 was examined-in-chief on 05.10.2015 and the petition under Section 311, Cr.P.C. was filed on 04.04.2016, which was dismissed by the Trial Court on 11.07.2016 and the present petition to set aside the order dated 11.07.2016 passed by the Trial Court, has been preferred before this Court only on 26.10.2016. All these clearly go to show that the petitioner/accused is adopting dilatory tactics. In such view of the matter, this Court is of the considered opinion that no indulgence need be shown to him.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Cr.M.P. is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

TO

1. The Inspector of Police,
Aralvoimozhi Police Station,
Aralvoimozhi,
Kanyakumari District.

2. The District Munsif Court-cum-Judicial Magistrate Court,
Boothapandi.

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

+1cc to M/s.R.MURUGAN Advocate in SR. NO.59041

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