



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2017

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE P. KALAIYARASAN

Crl.O.P.(MD)No.830 of 2017

and

Crl.M.P.(MD) No.709 of 2017

Sivaguru

... Petitioner

Vs.

State rep. by its
The Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar District.
(Crime No.232 of 2012)

... Respondent

PRAYER : Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P.No.10880 of 2015 in C.C.No.11 of 2014 dated 29.04.2016 on the file of Judicial Magistrate No.I, Virudhunagar by allowing this Criminal Original Petition and to permit the petitioner/accused to recall P.W.-1, P.W.-2 and P.W.-6 for the purpose of cross examination.

For Petitioner : Mr.S.Ramasamy
For Respondent : Mr.A.P.Balasubramani
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, seeking to set aside the order passed by the learned Judicial Magistrate No.I, Virudhunagar in Crl.M.P.No.10880 of 2015 in C.C.No.11 of 2014 dated 29.04.2016.

2.The learned Judicial Magistrate No.I, Virudhunagar dismissed the application filed by the petitioner/accused to recall P.Ws.1, 2 and 6 for cross-examination.

3.The learned counsel for the petitioner contends that the petitioner has failed to cross-examine those witnesses when they were examined in chief and unless an opportunity is given to the petitioner to cross-examine those witnesses his valuable right will be defeated and therefore, the order of the learned Judicial Magistrate No.I, Virudhunagar has to be set aside.



4.The learned Government Advocate (Criminal side) per contra contends that though P.Ws.1 and 2 were examined on 27.10.2014 and P.W.6 was examined on 02.06.2015, the petition was filed only on 10.12.2015 and therefore the object of the petitioner is only to drag on the proceedings and therefore, the petition is to be dismissed.

5.The fact remains that P.Ws.1, 2 and 6 were not cross-examined by the petitioner/accused. Though the reason given by the learned Judicial Magistrate No.I, Virudhunagar is convincing and acceptable, this Court is of the view that an opportunity is to be given to the petitioner to cross-examine those witnesses examined on the side of the prosecution so that the veracity of evidence can be tested.

6.Considering the said facts and circumstances, this Court issues the following order:

(i) The order of the learned Judicial Magistrate No.I, Virudhunagar is set aside.

(ii) The petitioner is directed to deposit Rs.500/- to each of the witnesses totally Rs.1,500/- (Rupees One Thousand and Five Hundred only) towards cost before the learned Judicial Magistrate No.I, Virudhunagar within a period of one week from today and the P.Ws.1, 2 & 6 are entitled to that amount.

(iii) Further, the petitioner is directed to cross-examine all the three witnesses now sought to be cross-examined on the same day as the date fixed by the Trial Court.

7.This Criminal Original Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(C.S-I)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1, Virudhunagar.

2.The Inspector of Police, Virudhunagar Bazaar Police Station, Virudhunagar District.

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

+1cc to M/s.S.Ramasamy, Advocate, in SR No.4587.

CrI.O.P.(MD) No.830 of 2017
and CrI.M.P.(MD) No.709 of 2017
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