



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

CRL.O.P.(MD)No.8695 of 2017

and

CRL.M.P.(MD)No.5890 of 2017

S.Jeyasingh

... Petitioner

**-Vs-**

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

2. Sudar

3. John Sekar

(R2,R3 impleaded as per order of this  
Hon'ble Court made in Crl.M.P(MD)No.7003/2017 in  
Crl.O.P.(MD)No.8695 of 2017 dated 01.09.2017)

... Respondents

**PRAYER:** Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to C.M.P.No.2056 of 2017 in C.C.No.246 of 1997 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, dated 31.05.2017 and to set aside the same and consequently, allow the application filed under Section 311 Cr.P.C.

|                |                                                    |
|----------------|----------------------------------------------------|
| For Petitioner | : Mr.F.Deepak                                      |
| For R-1        | : Mr.K.Anbarasan,<br>Government Advocate(Crl.Side) |
| For R-2 & R-3  | : Mr.N.Dilipkumar                                  |

### **O R D E R**

This Criminal Original petition is filed challenging the order passed by the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, dated 31.05.2017, in C.M.P.No.2056 of 2017 in C.C.No.246 of 1997.

<https://hcservices.courts.gov.in/hcservices/>  
2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Criminal side) appearing for the



first respondent and the learned counsel appearing for the respondents 2 and 3.

3. It is stated that the petitioner is one of the accused in the criminal proceedings in C.C.No.246 of 1997 on the file of the learned Judicial Magistrate, Padhmanabhapuram, Kanyakumari District. After the examination of the witnesses on the prosecution side was completed, it is also stated that an application was filed by the petitioner along with other accused under Section 311 Cr.P.C., to recall the witnesses P.W.1 and P.W.2 for further cross examination. It is further stated that the said petition was dismissed by the lower Court on the ground that the application filed after a delay of 3 years and 2 months.

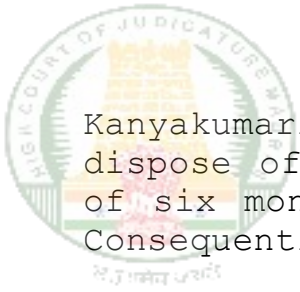
4. In the order dated 31.05.2017, in C.M.P.No.2056 of 2017, it was stated by the lower Court that the petitioner and other accused have not taken any efforts to cross examine the witnesses, when proper opportunity was available to them at the relevant point of time. It was also stated that when the accused who have not actually availed the opportunity at the appropriate time, such opportunity could not be given. The conduct of the accused that they did not appear on earlier occasion, was also cited as a reason to reject the application.

5. The learned counsel for the petitioner did not object to the reasoning of the lower Court. However, the learned counsel for the petitioner only submitted that a fair opportunity should be given to the petitioner and that serious prejudice is likely to be caused to the defence side, in case no opportunity was given to cross examine the crucial witnesses P.W.1 and P.W.2. It has been repeatedly pointed out by the Hon'ble Supreme Court in many number of cases that the accused should be given a fair opportunity and that prejudice that is likely to be caused to the prosecution shall not stand in the way of Court in exercising its discretion.

6. It is in these circumstances, this Court is inclined to allow this Criminal Original petition subject to terms. As a result, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate, Padhmanabhapuram, Kanyakumari District, in C.M.P. No.2056 of 2017 in C.C.No.246 of 2017 is set aside and the petition filed by the petitioner and others under Section 311 Cr.P.C., in C.M.P.No.2056 of 2017 in C.C.No.246 of 2017 stands allowed, subject to the payment of Rs.5,000/- (*Rupees Five Thousand only*) to the respondents 2 and 3 within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner shall cross examine the witnesses P.W.1 and P.W.2 on the date when the witnesses are available, without seeking any ~~Service courts and in person~~ for any other reasons.

<https://hccs.courts.madras.gov.in/>

7. The learned Judicial Magistrate, Padmanabhapuram,



Kanyakumari District, is directed to complete the trial and dispose of the proceedings in C.C.No.246 of 2017 within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

**To**

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

+ 1 CC TO Mr.F.DEEPAK, ADVOCATE IN SR No. 77897  
+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 77604

PMU

TE/KK/SAR-II : 27/09/2017 : 3P/6C

CRL.O.P.(MD)No.8695 of 2017 and  
CRL.M.P.(MD)No.5890 of 2017  
08.09.2017