



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.698 of 2016

and

CRL MP(MD)Nos.9771 & 9772 of 2016

Orders Reserved on 28.11.2016

A.Selvam : Petitioner / Petitioner / Accused

Vs.

State Rep.by
The Sub-Inspector of Police,
Traffic Investigation,
No.1 Police Station,
Madurai City,
Madurai

(Crime No.133 of 2012) : Respondent / Respondent /
Complainant

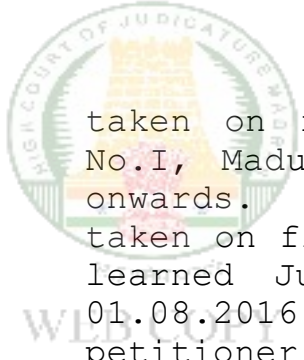
Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Cr.M.P.No.349 of 2016 in C.C.No.83 of 2013 on the file of the learned Judicial Magistrate No.1, Madurai and set aside the order, dated 21.08.2008 and allow the Criminal Revision.

For Petitioner : Mr.B.Chandramohan
For Respondent : Mr.P. Kandasamy
Government Advocate(Crl. Side)

O R D E R

This Revision has been filed praying to set aside the order, dated 21.08.2008, passed in Cr.M.P.No.349 of 2016 in C.C.No.83 of 2013 by the learned Judicial Magistrate No.I, Madurai.

2. The petitioner herein is the sole accused in C.C.No.83 of 2013, pending on the file of the learned Judicial Magistrate No.I, Madurai. The case has been registered against the petitioner in Crime No.133 of 2012, dated 04.12.2012, under Sections 279 and 304(A) of IPC., for the occurrence, dated 04.12.2012, on the basis of the written complaint and investigation was completed and final report was also laid on 29.12.2012 against the petitioner arraying as sole accused and was



taken on file on 10.05.2013 by the learned Judicial Magistrate No.I, Madurai and pending as C.C.No.83 of 2013, from 10.05.2013 onwards. The petitioner filed the discharge application and was taken on file as Cr.M.P.No.349 of 2016, which was dismissed by the learned Judicial Magistrate No.1, Madurai by its order dated 01.08.2016. The present Revision Petition has been filed by the petitioner / accused for the aforesaid relief.

3. I have perused the materials available on record and also heard the rival submissions advanced by either side.

4. The learned counsel appearing for the Revision Petitioner would submit that the petitioner is appearing for every hearing before the trial Court himself and through his counsel without fail for the past more than 3-1/2 years, but the case is pending only for examination of witnesses. The defacto complainant and the respondent Police did not take any effective steps to produce the witnesses for examination and for the same they make an evasive reply that the defacto complainant is in abroad and they are not able to trace his whereabouts. He further would contend that the petitioner is a driver in Tamil Nadu Armed Reserved Police, Madurai and the alleged occurrence took place on 04.12.2012 at about 8.45 a.m., while he was on duty by driving a water tank lorry bearing Registration No.TN-59-G-0708 on the way to Reserve Line from Arasaradi Water Tank. Because of the said criminal case pending against the petitioner, his promotion as well as benefits including monetary benefits have been affected. Even after the dismissal of the discharge application on 01.08.2016, the prosecution did not take any effective steps for production of witnesses.

5. The learned Government Advocate (crl.side) appearing for the respondent, on instructions, would submit that that there are totally 11 witnesses and the defacto complainant is residing in a foreign Country and the prosecution has sought permission to examine the other witnesses and the trial Court has also advised the prosecution to take immediate steps to examine the other witnesses without any further delay in its order dated 01.08.2016 and the prosecution is taking effective steps to proceed with the case.

6. The petitioner has not stated any other grounds for discharge from this case, except enormous delay of more than 3 years for commencement of the trial, by examining the prosecution witnesses. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Common Cause Vs. Union of India reported in [1996 CrI.L.J.2380(SC)] wherein it has been held that "where the cases pending in the Criminal Courts under IPC., or any other law for the time being in force, are punishable with imprisonment upto three years with or without fine and if such pendency is more than two



years and in such cases trial have still not commenced the trial Court shall discharge or acquit the accused, as the case may be, and close such cases."

7. The learned Government Advocate (crl.side) appearing for the respondent has relied on a Five Judges Constitutional Bench Judgment of the Hon'ble Apex Court in P.Ramachandran Vs. Union of India., reported in (AIR 2002 SC 1856) which overruled the Judgment reported in [1996 Cr.L.J.2380(SC)] (cited supra).

8. The learned counsel appearing for the Revision Petitioner has not denied the above fact and he has not cited any other decision in contra. It is categorically admitted by the respondent that there is considerable delay, as stated by the Revision Petitioner in examination of witnesses by the prosecution and the trial is also not commenced even after dismissal of the discharge application. In the above stated facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the trial Court in Cr.M.P.No.349 of 2016 in C.C.No.83 of 2013, dated 21.08.2008.

9. In the result, the Criminal Revision Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed and the interim stay granted in Cr.L.M.P.No.9771 of 2016, dated 20.08.2016 stands vacated. The trial Court is directed to expedite the examination of prosecution witnesses and conclude the trial and dispose the same within a period of two months from the date of receipt of a copy of this order and report the disposal to this Registry. The petitioner / accused is also directed to co-operate with the trial for early disposal within the stipulated time.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Madurai.

2.The Sub-Inspector of Police,
Traffic Investigation,
No.1 Police Station,

Madurai.
<https://hcservices.madurainet.in/HCServices/>



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

4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

Pre-Delivery Order made in
Crl.RC(MD)No.698 of 2016

Dated:-
24.07.2017

MPK

JM/MR KKR/SAR 1/04.08.2017/4P/5C