



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2017

CORAM

WEB COPY

**THE HON'BLE MR.JUSTICE S.S.SUNDAR**CrI.O.P.(MD) No.23077 of 2016andCrI.M.P.(MD) No.12135 of 2016

Anandhan

...Revision Petitioner/Accused

-Vs-

State through represented by,  
The Inspector of Police,  
Pandalgudi Police Station,  
(Crime No.12 of 2015)  
Virudhunagar District.

... Respondent/Complainant

**Prayer:** Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the impugned order dated 14.09.2016 in Cr.M.P.No.4500 of 2016 in C.C.No.121 of 2015 on the file of the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District and set aside the same as illegal.

For Petitioner : Mr.R.Shankar Ganesh  
For Respondent :Mr.K.S.Durai Pandian  
Additional Public Prosecutor  
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**ORDER**

This Criminal Original petition has been filed to set aside the order passed by the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District in Cr.M.P.No.4500 of 2016 in C.C.No.121 of 2015.

2.The petitioner is the accused in the proceedings before the lower Court. On the information furnished by member of public, a case was registered against the petitioner in Crime No.12 of 2015 for the alleged offences under Sections 420 and 465 IPC r/w 15(3) of Indian Medical Council Act, 1956. After filing the charge sheet, the case was taken on file by the learned learned Judicial Magistrate, Aruppukkottai, Virudhunagar District in C.C.No.121 of 2015, for the offences under Sections 465, 468 of IPC r/w 15(3) of Indian Medical Council Act,1956 r/w 420 of IPC and the same is pending.



3. After the commencement of trial, on the prosecution side, PW1 to PW8 were examined. Though examination of witnesses was over on the side of prosecution, the petitioner did not avail the opportunity of cross-examination of the witnesses. However, on 28.07.2016, the petitioner filed an application to re-call the prosecution witnesses PW1 to PW8 to cross examine them. Though there was no inordinate delay, the lower Court pointed out that the power under Section 311 Cr.P.C., can be invoked only when there are sufficient reasons for not availing the opportunity for cross examination.

4. Though the order passed by the lower Court is a well considered order and well founded, this Court is able to see that the petitioner has to be given a fair opportunity to defend his case. It appears that the evidence was closed at the time when the petitioner could not appear. Though the petitioner has not stated any reason in the petition filed before the lower Court, the petitioner states that due to emergency, the petition itself was drafted only by the petitioner without the assistance of his Advocate.

5. Having regard to the nature of offences alleged to have been committed by the petitioner, this Court is of the view that one more opportunity should be given to the petitioner subject to terms. Hence, the Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District in Cr.M.P.No.4500 of 2016 in C.C.No.121 of 2015 dated 14.09.2016 is set aside. The petition filed by the petitioner in Cr.M.P.(MD) No.4500 of 2016 in C.C.No.121 of 2015, stands allowed subject to a condition that the petitioner shall cross examine all the witnesses PW1 to PW8 as and when they are made available without seeking any further adjournment and also subject to a further condition that petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) towards the cost to the credit of Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of two weeks from the date of receipt of a copy of this order.

6. Hence, this petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate, Aruppukottai.

2.Do thro'the chief Judicial Magistrate,  
Virudhunagar District.

3.The Inspector of Police,  
Pandalgudi Police Station,  
Virudhunagar District.

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

COPY TO:

The Section Officer,  
Account Section, Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.SHANKAR GANESH, Advocate SR.No.83071

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MAS/KK/SAR1:07.11.2017:3P-7C

Cr1.O.P.(MD) No.23077 of 2016  
and  
Cr1.M.P.(MD) No.12135 of 2016  
13.10.2017