IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2018

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CRL.O.P.No.20917 of 2018
and CRL.M.P.No.11317 of 2018

Sundaramurthy .. Petitioner

Vs

The State rep. by
The Inspector of Police,
Attyampatty Police Station,
Salem District.
(Cr.No.317/2014) .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the order passed by the learned Principal District and Sessions Judge, Salem in CRP. No.59/2014 dated 26.11.2014 filed against the order passed in CMP No.4757 of 2014 dated 24.11.2014 by the learned Judicial Magistrate No.4, Salem, as against law enshrined Under Section 167 Clause (2) Criminal Procedure Code.

For Petitioner : Mr.M.G.Udayashankar

For Respondent : Mr.C.Raghavan,
Govt. Advocate.

O R D E R

The petitioner is an accused in Attayampatty Police Station in Criminal No.317 of 2014, for the offences under Section 120(B), 147, 148, 341, 302 r/w 149 IPC and the jurisdictional Court of Attayampatty Police Station is the Judicial Magistrate Court -IV, Salem. But the petitioner surrendered before the learned District Munsif-cum-Judicial Magistrate, Paramathy, on 11.11.2014. The Investigating Officer sought police custody of the petitioner before the learned Judicial Magistrate No.IV, Salem in C.M.P.No.4757 of 2014, which was rejected by the learned Magistrate on 24.11.2014. Challenging the rejection order, the Investigating Officer filed C.R.P.No.59 of 2014, before the learned Principal District and Sessions Judge, Salem and the learned Sessions Judge by order dated 26.11.2014, granted one day police custody of the petitioner. Challenging the order dated 26.11.2014, the petitioner is before this Court in the year 2018.

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2. In the opinion of this Court, on the short ground of laches alone, this petition deserves to be dismissed.

3. However, Mr.M.G.Udayashankar, learned counsel appearing for the petitioner submitted that the Session Court ought not to have granted police custody, 15 days after the surrender of the petitioner before the learned Judicial Magistrate, Paramathy.

4. In "Dinesh Dalmia vs. CBI reported in (2007) 8 SCC 770" the Supreme Court has stated that the period of taking police custody should be reckoned from the date of the production of the accused before the jurisdictional Magistrate Court and not from the date of surrendering of the accused before the Magistrate, who has no jurisdiction. This has been followed by a Division Bench of this Court in "Ayyappan & 3 others Vs. State reported in (2015) SCC Online Mad 11389".

5. Under such circumstances, this is not a fit case to interfere at this distant point of time. Hence, this petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy//

Sub Assistant Registrar

rts/vkr
To
1. The Principal District and Sessions Court,
   Salem.

2. The Judicial Magistrate Court No.4,
   Salem.

3. The Inspector of Police
   Attyampatty Police Station.

4. The Public Prosecutor,
   High Court, Madras.

CRL.O.P.No.20917 of 2018
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SPD(CO)
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