

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.O.P.No.27879 of 2017

Dr.G.Elangovan

... Petitioner

Vs.

The Inspector of Police,
Cuddalore New Town Police Station,
Cuddalore,
Cuddalore District.
(Crime No.181/13)

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order passed in C.M.P.No.1964 of 2017 in C.C.No.36 of 2016 dated 05.12.2017 pending trial on the file of the learned Judicial Magistrate No.II, Cuddalore.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.R.Ravichandran,
Government Advocate (Crl.Side)

ORDER

The prayer sought for in this petition is to set aside the order passed in C.M.P.No.1964 of 2017 in C.C.No.36 of 2016 dated 05.12.2017 pending trial on the file of the learned Judicial Magistrate No.II, Cuddalore.

2.I have heard Mr.K.G.Senthil Kumar, learned counsel appearing for the petitioner and Mr.R.Ravichandran, learned Government Advocate (Criminal Side) appearing for the respondent.

3.The petitioner is A1 in C.C.No.36 of 2016 on the file of the learned Judicial Magistrate No.II, Cuddalore. Since the case was not taken up immediately for trial, even though it was ripe for trial, the petitioner had earlier approached this Court by filing Crl.O.P.No.11100 of 2017, wherein this Court by an order dated 15.06.2017, directed the learned Judicial Magistrate

No.II, Cuddalore, to dispose of the case in C.C.No.36 of 2016 as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of the said order. It is also observed by this Court in that order that any attempt to protract the proceedings will be viewed seriously.

4.Pursuant to the said order passed by this Court, the trial was commenced and according to the learned counsel appearing for the petitioner, on the side of the prosecution, four witnesses have been examined including cross examination. The Investigating Officer has to be examined as P.W.5. In this regard, the learned counsel appearing for the petitioner would submit that the Investigating Officer, who is a woman officer, is in the family way. Therefore, she is not in a position to come to the Court and give evidence. The learned Magistrate, inspite of time bound direction given by this Court as referred to above, has time and again adjourned the matter. In this regard, the learned counsel appearing for the petitioner would further submit that, when the case came up for examination of witnesses on 28.11.2017, the Investigating Officer was not present and therefore, it was simply adjourned to 19.02.2018.

5.The learned counsel appearing for the petitioner would further submit that the petitioner is the retired Medical College Professor and he has to go abroad for attending some International Seminars related to his profession and also for some domestic work related to his son. Therefore, he applied for passport to the concerned Passport Authorities. Since the criminal case is pending against the petitioner, the Passport Authorities directed the petitioner to get No Objection Certificate from the Court under Section 6(2)(a) of the Passport Act. Pursuant to the said direction, it seems that, the petitioner had filed an application before the concerned Magistrate Court seeking No Objection Certificate for the purpose of getting passport. The said application filed on 05.09.2017 was returned for some rectifications. It is the case of the petitioner that, after rectification of mistakes, the application was re-presented on 14.11.2017 and therefore, the petitioner seems to have requested the learned Magistrate to pass orders on his application for grant of No Objection Certificate.

6.However, by an order dated 05.12.2017, the trial Court returned the application once again. The reason adduced by the learned Magistrate in returning the application is that case is pending for trial and at this stage, No Objection Certificate cannot be issued to the petitioner.

7.Aggrieved over the said order passed by the learned

Judicial Magistrate dated 05.12.2017 on his application seeking No Objection Certificate for getting passport, the petitioner has filed this petition with the aforesaid prayer. It is the further submission of the learned counsel appearing for the petitioner that, though a time bound direction was given by this Court in the earlier order referred to above to complete the trial within a period of four months and inspite of best co-operation given by the petitioner, the trial Court has adjourned the matter for a longer period from 28.11.2017 to 19.02.2018 without disclosing any reason. Only in this context, it is the submission of the learned counsel appearing for the petitioner that, since Investigating Officer is not ready and willing to appear before the Court to depose, because of her family way, the learned Magistrate has given such a longer adjournment. Thus, the completion of the trial is getting delayed and ultimately, it is the reason for denial of getting the passport by the petitioner.

8.However, Mr.R.Ravichandran, learned Government Advocate (Criminal Side) would submit that, it is not correct to state that all other witnesses of the prosecution side have been examined and the evidence of the Investigating Officer alone is pending. In fact, the examination of PWs.3, 4 and 5 is yet to be completed. Further, the Investigating Officer was shown as L.W.8 in the list of witnesses. After completion of all other witnesses on the side of the prosecution, then only the Investigating Officer has to depose before the trial Court.

9.Be that as it may, whether the Investigating Officer is co-operating or not, is not the issue, as of now, because there is a direction given by this Court by an order dated 15.06.2017, whereby a time bound direction was given, through which, it was directed that within a period of four months, the trial shall be completed. The said order has been passed on 15.06.2017. Therefore, the four months time already granted by this Court is over. It seems that no extension of time was granted by this Court extending the time of four months.

10.When a direction has already been given by this Court fixing a time limit to complete the trial, the trial Court has taken an earnest effort to complete the trial within the said period. As stated supra, the trial has not completed for one reason or the other.

11.When that being the position, the trial Court on 28.11.2017 has adjourned the matter to 19.02.2018, almost, for three months period, which, in the opinion of this Court, is not acceptable. If at all, any accommodation is sought for by the parties for any genuine difficulties, the trial Court can at the most adjourn the case by giving a week's time and not beyond that.

12. For of the delay caused in completing the trial, there is no reason attributed on the petitioner side, if they are not co-operated to complete the trial, the request of the petitioner for grant of No Objection Certificate also can be deferred showing the reason that the trial is pending.

13. Considering the facts and circumstances of this case, this Court is inclined to pass the following orders:

(1) The prosecution side is directed to produce their witnesses one by one without making any delay and the prosecution witnesses shall be examined by the trial Court within a period of two weeks from the date of receipt of a copy of this order. On Completion of the examination of prosecution witnesses, the Investigating Officer shall appear and depose evidence before the trial Court on the next date of hearing, which shall be fixed within a week thereafter. After completion of the examination of prosecution witnesses, the process of 313 Cr.P.C. questioning as well as the completion of examination of defence witnesses, if any, shall be completed within a period of two weeks thereafter. At any rate, the trial shall be completed within a period of two months from the date of receipt of a copy of this order and thereafter, depending upon the outcome of the trial, it is open to the petitioner to move an application for No Objection Certificate afresh for the purpose of getting passport.

(2) In view of the time bound direction given by this Court referred to above, the trial Court suo motu can advance the hearing from 19.02.2018 and such advance date shall duly be intimated to the parties through their respective Advocates to ensure their presence on the hearing date.

With these observations and directions, this Criminal Original Petition is disposed of.

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Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

mps

To

1.The Judicial Magistrate No.II,
Cuddalore.

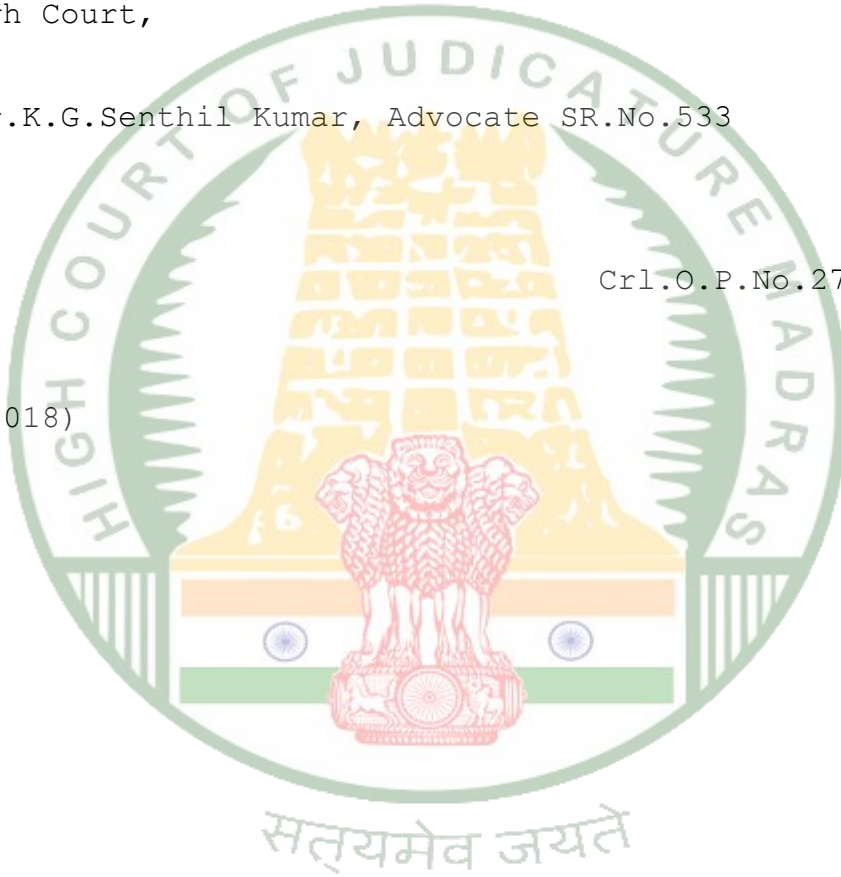
2.The Inspector of Police,
Cuddalore New Town Police Station,
Cuddalore,
Cuddalore District.

3.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.K.G.Senthil Kumar, Advocate SR.No.533

Crl.O.P.No.27879 of 2017

KAN(CO)
GN(08/01/2018)



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