



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P. (MD)No.2128 of 2018

and

CRL.MP (MD)No.945 of 2018

Anto Jegan

... Petitioner

-Vs-

The State of Tamil Nadu represented by
The Sub-Inspector of Police,
Nesamony Nagar Police Station,
Nagercoil, Kanyakumari District.
(Crime No.163 of 2013)

... Respondent

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 08.01.2018 passed Cr.M.P.No.4235 of 2017 in C.C.No.201 of 2013 on the file of the learned Judicial Magistrate Court No.II, Nagercoil, Kanyakumari District by allowing this Criminal Original Petition.

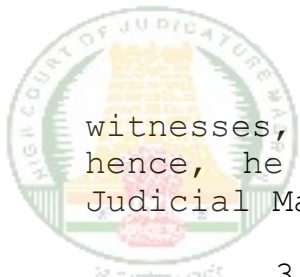
For Petitioner : Mr.N.Pragalathan

For Respondent : Mr.Prabu Ramachandran,
Government Advocate(Crl. Side)

O R D E R

This Criminal Original petition has been filed to set aside the order passed in C.M.P.No.4235 of 2017 in C.C.No.201 of 2013 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, dated 08.01.2018.

2.The learned counsel for the petitioner has submitted that the P.W.1/defacto-complainant is the father of the petitioner and the petitioner is facing trial for the alleged offences punishable Under Sections 294(b), and 506(ii) of I.P.C., in C.C.No.201 of 2013 on the file of the learned Judicial Magistrate No.II, Nagercoil. He further submitted that when PWs.1 to 3 were examined, the learned counsel for the petitioner was not available and hence they were not cross-examined on the same day. He further submitted that the said witnesses are material witnesses and hence in order to cross-examine them, the petitioner has filed a petition in C.M.P.4235 of 2017, but the learned Judicial Magistrate has dismissed the said application, <https://hsevtchecourtts.gov.in/series/> denying the petitioner's request. He further submitted that since the aforesaid witnesses are material witnesses, an opportunity may be given to the petitioner to cross-examine those



witnesses, otherwise the petitioner will put to irreparable loss and hence, he request to set aside the order passed by the learned Judicial Magistrate.

3.The learned Government Advocate (Crl.side) has submitted that the PWs.1 and 2 were examined in chief on 19.12.2013 and PW.3 was examined in chief on 22.01.2014, but the petitioner has filed a petition under Section 311 of Cr.P.C after four years and hence the learned Judicial Magistrate, has rightly dismissed the said petition.

4. A perusal of the impugned order shows that PWs.1 and 2 were examined in chief on 09.12.2013 and PW.3 was examined in chief on 22.01.2014. When the case was posted for examining the witnesses on the defence side, nearly after four years the petitioner has filed the above petition under Section 311 Cr.P.C, to recall the Pws. 1 to 3, stating that when the aforesaid witnesses were examined in chief, his counsel was not available. Considering the conduct of the petitioner, the trial court has dismissed the petition.

5. However, considering the fact that the aforesaid witnesses are material witnesses and also the fact that the PW.1 is the father of the petitioner herein, in order to give an opportunity to the petitioner to cross-examine those witness, this Court is of the view that this petition has to be allowed by imposing conditions.

6.In the result this Criminal Original Petition will be allowed on a condition that the petitioner shall deposit a sum of Rs.1000/- (One Thousand Only) to each of the witnesses, before the trial Court on or before 27.02.2018. If the petitioner has complied with the said condition before the aforesaid date, the order passed in C.M.P.No.4235 of 2017 in C.C.No.201 of 2013 on the file of the learned Judicial Magistrate No.II, Nagercoil will be set aside and the petition in C.M.P.No.4235 of 2017 in C.C.No.201 of 2013 on the file of the learned Judicial Magistrate No.II, Nagercoil shall stand allowed. In case, the petitioner failed to comply with the aforesaid condition within the time fixed by this Court, this petition shall stand dismissed automatically. On deposit of the aforesaid cost, the learned Judicial Magistrate has to recall Pws.1 to 3 and permit the petitioner herein to cross examine them. After such cross-examination, the learned Judicial Magistrate has to pay the cost of Rs.1,000/- to each of the witnesses. The petitioner should cross-examine those witnesses without of seeking adjournments. Consequently, connected CRL.MP(MD)No.945 of 2018, is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



1. The Judicial Magistrate Court No.II,
Nagercoil, Kanyakumari District

2. The Sub-Inspector of Police,
Nesamony Nagar Police Station,
Nagercoil, Kanyakumari District.

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

+1cc to Mr.N.Pragalathan Advocate in SR. NO. 48384

das

MV:SV-MMS:SAR1:22/02/2018/3P/5C

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