



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.2292 of 2018

and

CRL.M.P(MD)No.1049 of 2018

Velraj

... Petitioner/Sole Accused

-Vs-

State represented by
The Inspector of Police,
Vachakarappatti Police Station,
Virudhunagar District.
(Crime No.246 of 2010)

...Respondent

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 06.11.2017 passed in Cr.M.P.No.9547 of 2017 in C.C.No.57 of 2011 on the file of the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District.

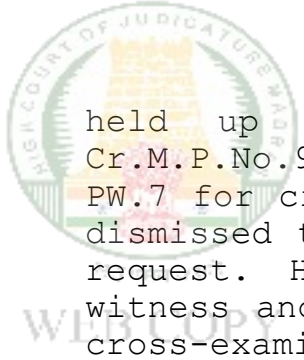
For Petitioner : Mr.A.Thiruvadi Kumar

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

O R D E R

This Criminal Original petition has been filed by the accused, to set aside the order passed in Cr.M.P.No.9547 of 2017 in C.C.No.57 of 2011 on the file of the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District, dated 06.11.2017.

2.The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the alleged offences punishable Under Sections 279, 337, and 304 (A) of I.P.C, in C.C.No.57/11, on the file of the learned Judicial Magistrate No.I, Virudhunagar. He further submitted that on 11.01.2017, the Investigating Officer was examined as PW.7 and on that day, the petitioner's counsel could not cross examine the said witness, as he



held up in another Court. Hence the petitioner has filed Cr.M.P.No.9547 of 2017 under Section 311 of Cr.P.C., to recall the PW.7 for cross examination, but the learned Judicial Magistrate has dismissed the said application without considering the petitioner's request. He further submitted that said witness is a material witness and hence an opportunity may be given to the petitioner to cross-examine the witness, otherwise the petitioner will put to irreparable loss and hence, he requests this Court to set aside the order passed by the learned Judicial Magistrate.

3.The learned Government Advocate (Crl.side) has submitted that on 11.01.2017, PW.7 was examined in chief and the petitioner has not filed any petition to recall the witness immediately, he has filed the present petition only after seven months and hence, the learned Judicial Magistrate has rightly dismissed the said application.

4.A perusal of the impugned order shows that PW.7 was examined in chief on 11.01.2017. But, the said witness was not cross examined on that date. After seven months the petitioner has filed Cr.M.P.9547 of 2017 under Section 311 Cr.P.C, to recall the PW.7, stating that when the aforesaid witness was examined in chief, his counsel was not available. Considering the conduct of the petitioner, the trial court has dismissed the petition. If really the petitioner's counsel is held up in another court, the petitioner should have made request before the trial court to pass over the matter or at least, he should have filed a petition on the next day. But, after taking seven months he has filed this petition. He has not given any explanation for the said delay.

5.However, Considering the fact that PW.7 is a material witness, in order to give an opportunity to the petitioner, this Court is inclined to allow this petition by imposing condition.

6.In the result, this Criminal Original Petition will be allowed on condition that the petitioner shall pay a sum of Rs.5000/- (Rupees Five Thousand Only) to the credit of the Honourable Chief Justice Relief Fund on or before 26.02.2018 and on such payment, the order passed in Cr.M.P.No.9547 of 2017 in C.C.No.57 of 2011 on the file of the learned Judicial Magistrate No.I, Virudhunagar District, will be set aside and the petition in Cr.M.P.No.9547 of 2017 in C.C.No.57 of 2011 on the file of the learned Judicial Magistrate No.I, Virudhunagar District shall stand allowed. In case, the petitioner failed to comply with the aforesaid condition within the time fixed by this Court, this Criminal Original Petition shall stand dismissed automatically without further reference to the Court. Consequently, connected CRL.MP(MD) No.1049 of 2018, is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



1. The Judicial Magistrate No.I,
Virudhunagar, Virudhunagar District.

2. The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar.

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

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

+1cc to Mr.A.Thiruvadi Kumar Advocate in SR. NO. 48555

Copy to : The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

das

MV:SV-MMS:SAR1:22/02/2018/3P/7C

CRL.O.P. (MD) No.2292 of 2018

14.02.2018