



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.2470 of 2018

and

CRL.M.P.(MD) No.1126 of 2018

Stephen

... Petitioner/Accused

-vs-

1.State rep by

The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.

... 1st Respondent/Complainant

2.Nadarajan

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 r/w 401 of Criminal Procedure Code, to set aside the order dated 26.07.2017 made in Crl.M.P.No.1173 of 2017 in S.T.C.No.2060 of 2008 on the file of the Judicial Magistrate Court No.I, Kuzhithurai, allow this Criminal Original Petition.

For Petitioner : Mr.N.S.Ramakrishna Dass
For R1 : Mr.Prabu Ramachandran
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner, to set aside the order passed by the learned Judicial Magistrate No.I, Kuzhithurai, in Crl.M.P.No.1173 of 2017 in S.T.C.No.2060 of 2008.

2.The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Sections 279, 337 and 338 I.P.C. He further submitted that P.Ws.1 to 4 were examined in chief on 19.09.2008 and P.Ws.5 and 6 were examined in chief on 26.09.2008 and on those days, the petitioner's advocate held up in another Court and hence, he could not cross-examine the said witnesses on the same day. He further submitted that those witnesses are material witnesses and unless an opportunity is given to cross-examine those witnesses, the petitioner will put to irreparable loss and hence the petitioner has filed a petition under Section 311 of Criminal Procedure Code in Crl.M.P.No.1173 of 2017 and the learned Judicial Magistrate without considering the petitioner's request has dismissed the said



petition. He further submitted that an opportunity may be given to the petitioner to establish that he is an innocent person and hence, the order passed by the learned Judicial Magistrate may be set aside.

3. The learned Government Advocate (Crl. Side) has submitted that P.Ws.1 to 4 were examined in chief on 19.09.2008 and P.Ws.5 and 6 were examined in chief on 26.09.2008 and the said witnesses were not cross-examined by the petitioner on the same day. He further submitted that when the case was posted for questioning under Section 313 of Criminal Procedure Code, after nearly ten years, the petitioner has filed a petition under Section 311 of Criminal Procedure Code in Crl.M.P.No.1173 of 2017 and taking into consideration the aforesaid delay, the learned Judicial Magistrate has rightly dismissed the application. He further submitted that after dismissing the said application, the petitioner did not appear before the trial Court and hence, Non Bailable Warrant has been issued and this petition has been filed with a view to drag on the proceedings.

4. The petitioner is facing trial for the alleged offences under Sections 279, 337 and 338 I.P.C. Even though, P.Ws.1 to 4, were examined in chief on 19.09.2008 and P.Ws.5 and 6 were examined in chief on 26.09.2008, the petitioner has not taken any steps to file petition to recall the aforesaid witnesses immediately or within the reasonable time. After nearly ten years, the petitioner has filed a petition under Section 311 of Criminal Procedure Code to recall P.Ws.1 to 6. For the said delay, the petitioner has not given any explanation. Further, it is not known that whether those witnesses are available after such a long period. Further, it is very difficult for the Police to trace out those witnesses and produce before the Court. Even if these witnesses are produced before the Court, how they can give evidence by recollecting the facts after 10 years. Further, as per the submission made by the learned Government Advocate (Crl. Side), the petitioner is not appearing before the Trial Court and Non Bailable Warrant has been issued against him. The conduct of the petitioner shows that he has not diligently conducted the case. Therefore, no leniency can be shown to the petitioner. The petition is lack of bona fide and the same is liable to be dismissed.

5. In the result, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate Court No.I,
Kuzhithurai.

2. The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.

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

CRL.O.P.(MD)No.2470 of 2018

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JM/JC/SAR 1/23.03.2018/3P/4C