



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.3411 of 2018
and
Crl.MP(MD)No.1602 of 2018

Shukathkamal

... Petitioner /Petitioner

-Vs-

The State Represented by
The Inspector of Police,
District Crime Branch Police Station,
Sivagangai,
Sivagangai District.
(Crime No.18 of 2006)

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and to set aside the order passed in Crl.M.P.No.4978 of 2017 in C.C.No.63 of 2012 on the file of the learned Judicial Magistrate No.II., Sivagangai, dated 23.01.2018.

For Petitioner : Mr.A.Saravanan

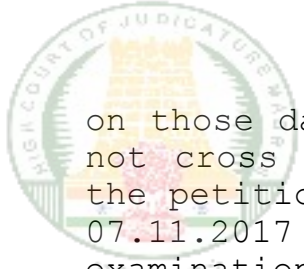
For Respondent : Mr.Prabhu Ramachandran
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed by the accused in Crime No.18 of 2006, to set aside the order passed by the learned Judicial Magistrate No.II, Sivagangai in Crl.MP.No.4978 of 2017 dated 23.01.2018.

2.Heard the learned counsel appearing for the petitioner and learned Government Advocate (Crl.side) appearing for the respondent.

3.The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Section 420 IPC. He further submitted that on the side of the prosecution, 8 witnesses were examined on various dates and



on those dates, the learned counsel for the petitioner herein could not cross examine them, because, he was not doing well and hence, the petitioner has filed an application under Section 311 Cr.P.C on 07.11.2017 to recall the Pws.1 to 8 for the purpose of cross examination. But, the learned Judicial Magistrate, without considering the petitioner's request, has dismissed the said application by the order dated 23.01.2018. He further submitted that since the aforesaid witnesses are material witnesses, an opportunity may be given to the petitioner to cross examine those witnesses.

4.The learned Government Advocate (Crl.side) has submitted that on the side of the prosecution, totally 10 witnesses were cited and out of them, 9 witnesses were examined as Pws.1 to 9 on various dates. But, the petitioner herein did not cross examine those witnesses, when they were examined in chief before the trial court. He further submitted that after taking several adjournments, and when the case was posted for questioning under Section 313 of Cr.P.C., with a view to drag on the proceedings, the petitioner has filed a Crl.M.P.No.4978 of 2017, to re-call Pws.1 to 8 and hence, the learned Judicial Magistrate has rightly dismissed the said petition.

5.The impugned order is perused. In the said order, the learned Judicial Magistrate has stated that on 20.06.2017 PWs.1 to 4 were examined, on 24.10.2017 PW.5 was examined, on 21.11.2017, PW.6 was examined, on 28.11.2017, Pws.7 & 8 were examined and on 22.12.2017, PW.9 was examined. But, the learned counsel for the petitioner has produced a Xerox copy of the petition in Crl.MP.No.4978 of 2017, which shows that the said petition was filed on 07.11.2017 and that being so, the aforesaid witnesses could not have been examined on 21.11.2017 or 28.11.2017 as stated by the learned Judicial Magistrate.

6.It seen from the Xerox copy of the charge sheet, in which, a list of witnesses also enclosed, wherein, it is stated that on 28.01.2009 Pws 1 to 3 were examined, on 13.05.2014 PW.4 was examined, on 13.10.2015 PW.5 was examined, PW.9 was examined on 03.11.2017 and in respect of other Pws, it is not clearly mentioned in the said list of witnesses. Any how, those witnesses might have been examined before 07.11.2017 itself, that is before filing of the Crl.M.P.No.4978 of 2017. The petitioner has stated in his petition that due to the illness of his counsel, those witnesses were not cross examined, when they were examined in chief before the trial court. As already stated those witnesses were not examined on the same day. They were cross examined on different dates ranging from the year 2009 to 2017. So, the reason stated by the petitioner that his counsel was not doing well for the past 8 years is highly unbelievable. If his counsel is continuously not doing well, it is the duty of the petitioner to engage another counsel to conduct his case. So, it appears that the reason stated in the petition is not a genuine one. However, considering the fact that the petitioner is facing serious charge under Section 420 of IPC, this Court is of the



view that an opportunity can be given to the petitioner by imposing stringent condition.

7. In the result, this Criminal Original Petition will be allowed on deposit of a sum of Rs.50,000/- (Fifty Thousand only) before the trial court on or before 10.04.2018, failing which, this petition shall stand dismissed. On complying with the aforesaid condition, the learned Judicial Magistrate No.II, Sivagangai is directed to recall the Pws 1 to 8 and to give an opportunity to the petitioner to cross examine them and after cross examination of those witnesses, disburse the aforesaid amount to the aforesaid witnesses proportionately.

8. With the aforesaid observations, this Criminal Original Petition is disposed of. Consequently, connected CrI.M.P. (MD) No.1602 of 2018, is closed.

Sd/-
Assistant Registrar (ADII)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II,
Sivagangai

2. The Inspector of Police,
District Crime Branch Police Station,
Sivagangai, Sivagangai District.

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

+One cc to Mr.S.Muthukumar, Advocate, SR.No.57054

das
RL/5C/3P/SKN/RSK/SAR1/23/3/2018

CrI.O.P. (MD) No.3411 of 2018
and
CrI.MP (MD) No.1602 of 2018