



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.3684 of 2018
and
Crl.MP(MD)No.1775 of 2018

J.Justin Kumaradhas

...Petitioner/Accused

-Vs-

The State of Tamil Nadu represented by
The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

...Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the order passed in C.M.P.No.5233 of 2017 in C.C.No.34 of 2007 on the file of the learned Judicial Magistrate, Padmanabhapuram dated 07.12.2017 and set aside the same.

For Petitioner : Mr.C.K.M.Appaji
For Respondent : Mr.Prabhu Ramachandran
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed by the accused to set aside the order passed by the learned Judicial Magistrate, Padmanabhapuram, in C.M.P.No.5233 of 2017, in C.C.No.34 of 2007.

2.The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Section 304 A IPC and he further submitted that when the PWs 1 and 2 were examined in Chief, the petitioner did not cross examine them. Hence, the petitioner has filed a petition under Section 311 of Cr.P.C, to recall the PWs 1 and 2 for the purpose of cross examination and the learned Judicial Magistrate Padmanabhapuram, without considering the petitioner's request, has dismissed the said petition by order dated 07.12.2017. He further submitted that PWs.1 & 2 are eye witnesses and they are material witnesses. Unless an opportunity is given to the petitioner to cross examine those witnesses, the petitioner will be put to irreparable loss.



3.The learned Government Advocate(Crl.Side) has submitted that the case was taken on file against the petitioner in the year 2007 and Pws.1 & 2 were examined on 12.05.2014 and after three years, the petitioner has filed a petition to recall the PWs.1 & 2, without assigning any reasons. Hence, the learned Judicial Magistrate, Padmanabhapuram has rightly dismissed the said petition.

4. A copy of the petition, filed by the petitioner in C.M.P.No.5233 of 2017 before the trial court, has been produced by the petitioner. A perusal of the said petition shows that the petitioner has not at all stated any reason for not cross examining PWs. 1 & 2, when they were examined in Chief. He has simply stated that those witnesses were not cross examined by him and unless they are cross examined, his side case will not come to light. Except the aforesaid averments, nothing has been stated as to why he has not cross examined those witnesses. Therefore, this Court is of the view that the trial court has rightly rejected the petitioner's request. This Criminal Original Petition is bereft of merits and the same is liable to be dismissed.

5.In the result, this Criminal Original Petition is dismissed. Consequently, connected Crl.MP(MD)No.1775 of 2018, is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate, Padmanabhapuram.

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

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

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RL/4C/2P/SV/MMS/SAR1/18/4/2018

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