



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

CORAM

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.3775 of 2018
and
Crl.M.P.(MD)No.1832 of 2018

Jebin

...Petitioner/Accused No.2

-Vs-

State through
The Sub-Inspector of Police,
Kuzhithurai Police Station,
Marthandam,
Kanyakumari District.
(Crime No.839 of 2009)

...Respondent

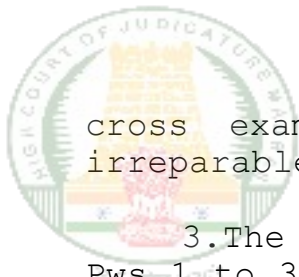
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and set aside the order dated 07.12.2017 passed in Crl.M.P.No.8748 of 2017 in C.C.No.438 of 2009 on the file of the learned Judicial Magistrate Court No.1, Kuzhithurai.

For Petitioner	: Mr.V.M.Balamohan Thampi
For Respondent	: Mr.Prabhu Ramachandran Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed by the accused no.2, to set aside the order passed by the learned Judicial Magistrate No.1 Kuzhithurai in Crl.M.P.(MD)No.8748 of 2017 in C.C.No.438 of 2009.

2.The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Sections 341, 294(b) and 324 IPC. He further submitted that the Pws 1 to 3 were examined in Chief on 26.09.2012 and on that date the petitioner's counsel was held up in another court. Hence, the witnesses were not cross examined on the same date. He further submitted that the petitioner has filed a petition under Section 311 Cr.P.C, to recall the Pws 1 to 3 in Crl.MP(MD)8748 of 2017, for the purpose of cross examination and the learned Judicial Magistrate without considering the petitioner's request, has dismissed the said application. He further submitted that those witnesses are material witnesses and 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 Pws 1 to 3 were examined in Chief on 26.09.2012 and after 5 years, the petitioner has filed a petition in Crl.M.P(MD)No.8748 of 2017, to recall the Pws 1 to 3. Hence, the learned Judicial Magistrate has rightly rejected the aforesaid petition.

4.Considering the fact that the petitioner is charged with under Sections 341, 294(b) and 324 IPC and also the fact that on the date of examination of those witnesses before the trial court, the learned counsel for the petitioner was held up in another court, with a view to give an opportunity to the petitioner, this Court is inclined to allow this petition by imposing certain conditions.

5.In the result, this Criminal Original Petition will be allowed on deposit of a sum of Rs.9,000/- (Nine Thousand only) before the trial court on or before 02.04.2018, failing which this petition shall stand dismissed. On such deposit, the learned Judicial Magistrate No.1,. Kuzhithurai has to recall the Pws 1 to 3 and 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. Consequently, connected Crl.M.P.(MD)No.1832 of 2018, is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

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

2.The Sub-Inspector of Police,
Kuzhithurai Police Station,
Marthandam, Kanyakumari District.

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

+1CC TO M/S.V.M.BALA MOHAN THAMBI, ADVOCATE, SR NO.55257

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