



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2018

CORAM

THE HON'BLE MR.JUSTICE P. RAJAMANICKAM

Crl.O.P.(MD) No.586 of 2018

and

Crl.M.P(MD).No.244 of 2018

Boobalan

...Petitioner/Petitioner/Accused No.1

-Vs-

State rep. by

The Inspector of Police,

Thiruvattar Police Station,

1/C, Kulasekaram Police Station,

Kanyakumari District.

... Respondent/Respondent/Complainant

Prayer: This Criminal Original petition is filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 15.12.2017 passed in CMP.No.5392 of 2017 in C.C.No.393 of 2009 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

For Petitioner : Mr.A. Thiruvadikumar

For respondent : Mr.Prabhu Ramachandran
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the accused no.1 to set aside the order passed by the learned Judicial Magistrate, Padmanabhapuram in CMP.No.5392 of 2017 in C.C.No.393 of 2009, dated 15.12.2017.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the accused no.1 in C.C.No.393 of 2009 and he is facing trial for the offence under Section 304(A) of IPC and another accused is the Conductor of the Bus. He further submitted that PW.1 to PW.3 were examined on 02.03.2011 and subsequently, PW.4 was examined on 20.02.2017 and PW.5 and PW.6 were examined on 04.05.2017. He further submitted that since there was no co-ordination between the petitioner and his counsel, those witnesses were not cross-examined, when they were examined before the trial Court. He further submitted that the aforesaid witnesses are material witnesses and unless an opportunity is given to cross examine the said witnesses, the petitioner will put to irreparable loss and hardship. He further submitted that the petitioner has filed a petition in CMP.No.5392 of 2017 before the



Trial Court to recall PW.1 to PW.6 on 29.11.2017, but, the learned Judicial Magistrate has dismissed the said petition, without considering the petitioner's request.

3. The learned Government Advocate (Crl. Side) appearing for the respondent, on instructions, submitted that 13 witnesses cited in the charge sheet and out of 13 witnesses 7 witnesses were examined as PW.1 to PW.7 and now, the case is posted for examination of Investigating Officer. He further submitted that even though opportunities were given to the petitioner to cross examine the prosecution witnesses, he failed to avail the said opportunities and hence, he opposed this petition.

4. A perusal of the impugned order shows that PW.1 to PW.3 were examined in chief on 02.03.2011 and subsequently, PW.4 to PW.5 were examined in the year 2017. It shows that, for the past six years, the petitioner did not take any steps to recall the PW.1 to PW.3. Only on 29.11.2017, he has filed a petition under Section 311 of Cr.P.C to recall the aforesaid witnesses. The conduct of the petitioner shows that he has not evinced any interest to recall the PWs. 1 to 6 to cross-examine them within a reasonable time. Since already six years lapsed, it is not known whether the PWs.1 to 3 are available or not. However, in order to give an opportunity to the petitioner, I am inclined to allow this petition on terms.

5. Accordingly, subject to the payment of cost of Rs.6,000/- (Rupees Six Thousand only), to the credit of the Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, on or before 31.01.2018, this Criminal Original Petition is allowed and the order dated 15.12.2017 passed in CMP.No.5392 of 2017 in C.C.No.393 of 2009, on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District is set aside and the CMP.No.5392 of 2017 in C.C.No.393 of 2009 is allowed. It is made clear that if the petitioner fails to pay the cost within the stipulated time, this petition shall stand dismissed automatically without any further reference to this Court. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Padmanabhapuram,
Kanyakumari District.



2. The Inspector of Police,
Thiruvattar Police Station,
1/C, Kulasekaram Police Station,
Kanyakumari District.

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

Copy to

The Section Officer
Account Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A. Thiruvadikumar, Advocate Sr.No.42130

TRP

VB/JC/SAR1/24/01/2018/3P/7C

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