



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.01.2018

CORAM:

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.(MD)No.702 of 2018
and
CrI.M.P.(MD).No.308 of 2018

Shaji

... Petitioner/Accused

-Vs-

State through
The Inspector of Police,
Kuzhithurai Police Station,
Kuzhithurai,
Kanyakumari District.
In Cr.No.352/2006

... Respondent/Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 20.11.2017 passed in CrI.M.P.No.7843 of 2017 in C.C.No.308 of 2006 on the file of the Judicial Magistrate Court No.1, Kuzhithurai.

For petitioner

: Mr.V.M.Balamohan Thambi

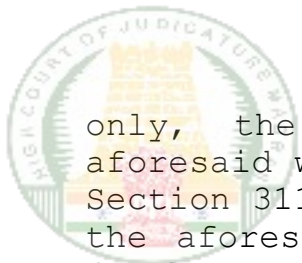
For Respondent

: Mr.Prabhu Ramachandran
Government Advocate (CrI. Side)

O R D E R

This Criminal Original petition has been filed by accused to set aside the order passed by the learned Judicial Magistrate, No.1, Kuzhithurai in CrI.M.P.No.7843 of 2017 in C.C.No.308 of 2006 on the file of the Judicial Magistrate Court, No.I, Kuzhithurai, dated 20.11.2017.

2. The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial in C.C.No.308 of 2006. He further submitted that P.Ws.3, 5, 9, 10 and 12 were not cross examined, when they were examined in chief, as his counsel was not available on that day. He further submitted that now the case is posted for evidence on the side of the accused and at that stage



only, the petitioner realized that cross examination of the aforesaid witnesses is must and hence, he has filed a petition under Section 311 Cr.P.C in Cr.M.P.No.7843 of 2017 on 06.11.2017 to recall the aforesaid witnesses for the purpose of cross-examination. He further submitted that the learned Judicial Magistrate, without considering the request made by the petitioner, has dismissed the petition, without giving opportunity to the petitioner to cross examine the aforesaid material witnesses.

3. The learned Government Advocate (Crl.side) has opposed this petition on the ground that even though P.W.3 was examined on 14.11.2007, P.W.5 was examined on 23.01.2008, P.W.9 was examined on 18.06.2013, P.W.10 was examined on 20.08.2013 and P.W.12 was examined on 30.01.2014, the petitioner has not taken any steps to recall the aforesaid witnesses within the reasonable time and with a view to drag on the proceedings, he has filed a petition to recall the aforesaid witnesses belatedly, after eleven years.

4.A perusal of the order passed by the learned Judicial Magistrate shows that P.Ws.3, 5, 9, 10 and 12 were examined in chief on 14.11.2007, 23.01.2008, 18.06.2013, 20.08.2013 and on 30.01.2014 respectively. After 11 years, the petitioner has filed the petition to recall the aforesaid witnesses. The reason stated by the petitioner shows that since his counsel was not available on the particular dates, the aforesaid witnesses were not cross examined on the very same date. Even if the said contention is accepted for argument sake, the petitioner has not stated any reason for not filing petition to recall the aforesaid witnesses within the reasonable time. However, in order to give an opportunity to the petitioner, to cross examine the aforesaid witnesses, I am inclined to allow the present petition by imposing condition.

5.In the result, this Criminal Original Petition will be allowed on a condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees five thousand only) to the credit of the Honourable Chief Justice Relief Fund on or before 07.02.2018 and the order passed in Crl.M.P.No.7843 of 2017 in C.C.No.308 of 2006 by the learned Judicial Magistrate Court, No.I, Kuzhithurai, dated 20.11.2017 will be set aside and the petition in Crl.M.P.No.7843 of 2017 in C.C.No.308 of 2006 on the file of the Judicial Magistrate Court, No.I, Kuzhithurai, shall stand allowed. In case, the petitioner failed to comply with the aforesaid condition, this Criminal Original Petition shall stand dismissed automatically without further reference to the Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

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1.The Judicial Magistrate No.I, Kuzhithurai

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

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

Copy to:-

**The Section Officer, Accounts Section,
Madurai Bench of Madras High Court,
Madurai**

vs

RL/5C/3P/SKN/RSK/SAR1/25/1/2018

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17.01.2018