



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.12403 and 12466 of 2017

and

Crl.M.P (MD) No.8573 of 2017

1. Ponnaiah Nadar ... Petitioner in
Crl.O.P. (MD) No.12403 of 2017

2. Mariya Rajenderan ...Petitioner in
Crl.O.P. (MD) No.12466 of 2017

Vs.

State through:

The Sub Inspector of Police

Nesamony Nagar Police Station

Nagercoil ...Respondent in both Crl.O.Ps

Prayer in Crl.O.P (MD) No.12403 of 2018 : This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed in 17.06.2017 in Crl.M.P.No.2605 of 2017 in C.C.No.97 of 2007 on the file of the Judicial Magistrate Court No.II, Nagercoil.

Prayer in Crl.O.P (MD) No.12466 of 2018 : This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed in 17.06.2017 in Crl.M.P.No.1907 of 2017 in C.C.No.97 of 2007 on the file of the Judicial Magistrate Court No.II, Nagercoil.

For Petitioners : Mr.J.Madhu (in both Crl.O.P's)
For Respondents : Mrs.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)
(in both Crl.O.P's)

ORDER

These petitions have been filed to set aside the order passed by the learned Judicial Magistrate No.II, Nagercoil dismissing the petition filed by the petitioners under section 311 of Cr.P.C to recall PW 1 to 11 for cross examination.

2. The learned Judicial Magistrate No.II, Nagercoil has given cogent and valid reasons for dismissing the petition filed by the petitioners to recall PW 1 to PW 11 and this Court does not find any illegality or infirmity in the said order.



3. However, on an earlier occasion A3 had approached this Court with similar prayer and this Court passed the following order:

"2. Though the case was pending for a long time from 2007, it appears that witnesses PW.1 to PW.8 were examined from 11.09.2013. Except P.W.9 to P.W.11 all other witnesses were examined in chief even in the year 2014. Though the petitioner did not file the petition to cross examine any of the witnesses, the petition was filed by the petitioner/ third accused in Crl.M.P.No.3159 of 2016, after three years from the date of examining PW.1 to PW.8 in the year 2014. Without any valid reason for the delay, this petition is filed and hence the learned Judicial Magistrate No.II, Nagercoil, refused to entertain the same as the matter is already ten years old and that the case is at the stage of defence evidence and stating that the judgment relied upon by the petitioner for the proposition that fair opportunities should be given to the petitioner is not applicable to the facts of the present case, where the petitioner has not given any explanation for getting the documents which according to him was required at the relevant time to cross-examine the witnesses in the case, dismissed the petition.

3. Challenging the said order, the present Criminal Original Petition has been filed by the petitioner. Though, this Court is not inclined to hold that the observations made by the learned Judge are not proper, on over all consideration of the facts and circumstances of the case and the legal implication of denying the fair opportunity to the petitioner to defend the criminal case, this Court is inclined to allow this petition on terms. As a result, the order passed by the learned Judicial Magistrate, No.II, Nagercoil, made in Crl.M.P.No.3159 of 2016 in C.C.No.97 of 2007 dated 15.07.2017 is set aside. The petition filed by the petitioner under section 311 of Cr.P.C in Crl.M.P.No.3159 of 2016 in C.C.No.97 of 2007 stands allowed, subject to the condition that the petitioner shall cross examine all the witnesses as and when they are made available without seeking any further adjournment. This order also will be subject to the condition of payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the Honourable Chief Justice's relief fund, Madurai Bench of Madras High Court, Madurai within a period of two weeks from the date of receipt of a copy of this order.



Consequently, connected Criminal Miscellaneous
Petition is closed"

4. In order to maintain consistency in the orders passed by this court, this Court deems it fit to set aside the order of the learned Judicial Magistrate No.II, Nagercoil made in C.M.P.No.2605 of 2017 in C.C.No.97 of 2007, dated 17.06.2017.

5. The petitioner in each of the petition shall pay a cost of Rs.1000/- (Rupees Thousand only) to each witnesses as and when they are summoned before the Court for cross examination. The trial court shall fix a date for appearance of the witnesses and also furnish with the depositions of the witnesses so that the witness can refresh his /her memory on the day when the witnesses appears. If for any reason the petitioner fails to cross examine the witnesses, the petitioner will forfeit his right to recall the witness again. As mentioned above, the petitioner shall pay costs of Rs.1000/- (Rupees One thousand only) to each of the witness when he comes for giving evidence.

6. Accordingly, the Criminal Original Petition is allowed to the extent indicated above. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Sub Inspector of Police
Nesamony Nagar Police Station
Nagercoil
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Madhu, Advocate Sr.No.77981

AAV

VB/KAK/SAR2/06.09.2018/ 3P/ 4C

**CrI.O.P. (MD) No.12403 and
12466 of 2017
and
CrI.M.P (MD) No.8573 of 2017
10.08.2018**