

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 17.04.2018****CORAM:****THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR****CRL.O.P. (MD) No.6132 of 2018**

M.Anbu : Petitioner/Accused

-Vs-

State represented by
The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.
(Crime No.258 of 2014)

: Respondents/ Complainant

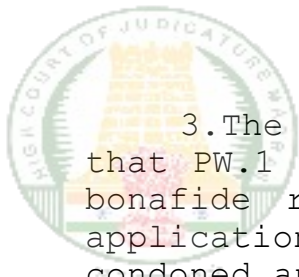
PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order made in C.M.P.No.5328 of 2017 in C.C.No.94 of 2015 on the file of Judicial Magistrate Court No.II, Nagercoil dated 28.12.2017 and allow the petition seeking recall of the witness namely PW1.

For Petitioner : Mr.R.Joseph Thankaraj

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor**O R D E R**

This petition has been filed to set aside the order made in C.M.P.No.5328 of 2017 in C.C.No.94 of 2015 on the file of Judicial Magistrate Court No.II, Nagercoil, dated 28.12.2017 and allow the petition seeking to recall the witness namely PW1.

2.According to the petitioner, the petitioner was charged for the offence under Sections 294(b), 447 and 506(ii) IPC. After completing investigation, the respondent has filed charge sheet and the same has been taken on file in C.C.No.94 of 2015 before the Judicial Magistrate Court No.II, Nagercoil. During trial, PW.1 was examined on 12.08.2016. But due to boycott of advocates, P.W.1 could not be cross-examined on that date. Hence, the petitioner has filed an application to recall P.W.1 for cross-examination, but the said application was dismissed by the Judicial Magistrate No.II, Nagercoil, on the ground that the petitioner has filed the application after a lapse of one year. Challenging the aforesaid order, the present petition has been filed.



3.The learned counsel for the petitioner has vehemently argued that PW.1 was not cross-examined on 12.08.2016 due to the aforesaid bonafide reason. Even though there is a delay in filing such application, considering the interest of justice, the delay can be condoned and the application ought to have been allowed by the Court below. But the Court below, without considering the aforesaid bonafide reasons, has dismissed the application, which is unsustainable in law.

4.The learned Additional Public prosecutor would submit that the petitioner has not stated sufficient reason in the application and the delay in filing of the application is more than one year. Therefore, in the light of the decision of the Hon'ble Supreme Court, the application cannot be entertained and the order passed by the Court below is sustainable and the present criminal original petition is liable to be dismissed.

5.This Court has considered the similar issue in CrI.O.P(MD). No.5252 of 2018, in the light of the decision of the Hon'ble Supreme Court (Vinod Kumar v. State of Punjab) reported in (2015) 3 Supreme Court Cases 220, wherein, at paragraphs 57.1 and 57.2 it is held as follows:-

"57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics."

6.In the light of the aforesaid decision, there is no error in rejecting the application filed by the petitioner and therefore, the order passed by the Court below does not warrant any interference of this Court. Hence, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar



To

1.The Judicial Magistrate No.II,
Nagercoil.

2.The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.

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

+1cc to Mr.R.Joseph Thankaraj, Advocate, SR.No.61975.

CRL.O.P.(MD)No.6132 of 2018
17.04.2018

RMK

RAM/SB/SAR 3/22.06.2018/3P/5C