



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.(MD)No.21537 of 2018
and
Crl.M.P.(MD)No.9967 of 2018

M.Gurusamy

...Petitioner

/Vs./

The State represented by
The Inspector of Police,
Mayanoor Police Station,
Karur District.
(Crime No.269 of 2017)

... Respondent

PRAYER: Criminal Original Petition - filed under Section 482 of the Cr.P.C., to set aside the docket order dated 20.11.2018 passed in Cr.M.P.No.1146 of 2018 in S.C.No.20 of 2018 on the file of the Principal Sessions Court, Karur.

For Petitioner :Mr.V.Illanchezian

For Respondent :Mr.A.Robinson

Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to set aside the docket order dated 20.11.2018 passed in Cr.M.P.No.1146 of 2018 in S.C.No.20 of 2018 on the file of the Principal Sessions Court, Karur.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused in S.C.No.20 of 2018 pending on the file of the Principal Sessions Court, Karur. He would further submit that the petitioner filed a petition to recall the witnesses namely P.W. 1 and P.W.14 and the learned trial judge, considering the fact that recall and cross examination of P.W.1 and P.W.14 are essential, allowed the petition and posted the matter on 20.11.2018 for cross-examining P.W.1 and P.W.14.

3. He would further submit that the counsel who was conducting the trial, is a resident of Trichy and that on 20.11.2018, he was affected with viral fever and he was unable to appear before the Court. More over, on that day, Trichy was also affected with Gaja storm and thereby, he was unable to travel with the ailment and thereby, the petitioner was unable to cross examine the witnesses. He would further submit that a petition under Section 309 Cr.P.C., was filed for seeking adjournment, however the learned Judge dismissed the petition stating that witnesses are present and that illness of the counsel is not a good ground to ask the witnesses to come on other day.



4. The learned counsel would further submit that the trial Court, finding that the cross examination of the witnesses are essential, had graciously granted permission to recall whereas the counsel for the petitioner was unable to cross examine due to unavoidable circumstance. He would submit that the failure of cross examination of the witnesses on the particular day was neither willful nor wanton. The cross examination of other witnesses have been done in time and would pray that the petitioner may be permitted to cross examine P.W.1 & P.W.14 on imposition of terms and costs. He would further submit that the petitioner will undertake to cross examine the witnesses on date of their appearance without taking further adjournment and would get along with the progress of trial.

5. I have gone through the order of the trial Court. I find no illegality or error in the order passed by the learned trial judge. The learned Judge has rightly followed the mandate of the Hon'ble Apex Court in Vinodh Kumar vs. State of Punjab and dismissed the petition stating that illness of the counsel cannot be a ground to ask the witnesses on another day. However, taking into consideration the facts of the case, this Court is of the opinion that the petitioner may be granted one more opportunity and that he may be permitted to cross examine P.W.1 and P.W.14.

6. This Court enquired the learned Government Advocate (Crl. Side) about the next date of hearing and possibility of the respondent (P.W.14) to appear and produce P.W.1 before the court for cross examination. The learned Government Advocate (Crl. Side) on instructions would submit that the case stands posted on 18.12.2018 and on that day, the respondent/P.W.14 will appear and that he would be able to produce P.W.1 for cross examination.

7. In view of the above submission, the respondent police being the Investigating Officer and P.W.14 is directed to appear before the Court and produce P.W.1 on the next hearing date i.e., on 18.12.2018 and on that day, the petitioner shall cross examine P.W.1 and P.W.14 without fail. The Court shall hand over a copy of the deposition made in chief to the P.W.1 to refresh his memory and the learned counsel for the petitioner shall cross examine on the same day. This Court also imposes cost of Rs.2,000/- [Rupees Two Thousand only], Out of which, Rs.1,000/- [Rupees One Thousand only] shall be paid to P.W.1 on the date of his appearance before the trial Court and an amount of Rs.1,000/- [Rupees One Thousand only] shall be paid to the District Legal Services Authority before cross examination.

8. With the above observations, this criminal original petition is closed. Consequently, connected Miscellaneous Petition is also closed.

Sd/
Assistant Registrar (AD-I)

/True copy/



To

1.The Principal Sessions Judge, Karur.

2.The Inspector of Police,
Mayanoor Police Station,
Karur District.

Copy to:

1.The Officer in Charge,
District Legal Services Authority, Karur.

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

+1cc to Mr.V.Illanchezian, Advocate, SR.No.99374

Cr1.O.P. (MD) .No.21537 of 2018

SM

KK/RSK/SAR-1/12.12.2018/3P-6C