



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRL.O.P.(MD)No.6385 of 2018

and

CRL.MP.(MD)No.3026 of 2018

M.Edison

... Petitioner / Petitioner /
Accused No.2

-Vs-

The State represents through by its
Sub-Inspector of Police,
Kottar Police Station,
Kanyakumari District.

. . . Respondent / Respondent /
Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the order passed in C.M.P.No.6303 of 2017 in C.C.No.237 of 2016 dated 03.03.2018 on the file of the Judicial Magistrate Court No.II, Nagercoil and set aside the same.

For Petitioner : Mr.S.Sankar

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

O R D E R

This Petition has been filed to call for the records pertaining to the order passed in C.M.P.No.6303 of 2017 in C.C.No.237 of 2016 dated 03.03.2018 on the file of the Judicial Magistrate Court No.II, Nagercoil and set aside the same.

2.The learned counsel for the petitioner submits that on 06.06.2017 Mr.Xavier was examined as PW1 and Mr.Selvan was examined as PW2 and Mr.John Bosco was examined as PW3 on 18.07.2017. The learned counsel appearing for the petitioner would further submit that Cross examination of the above witnesses could not be done on the said dates due to the non appearance of the counsel. On 29.08.2017 a petition has been filed in C.M.P.No.6303 of 2017 in C.C.No.237 of 2016 on the file of the Judicial Magistrate Court No.II, Nagercoil, to recall the said witnesses and the same was



dismissed by the learned Judicial Magistrate No.II, Nagercoil. Aggrieved by the same, this Criminal Original Petition has been filed before this Court.

3.The said application was dismissed on the ground that the petition has been filed after a lapse of more than six months from the examination of PWS.1 and 2 and after five months from the examination of PW3.

4.On a perusal of the materials, it is seen that PWS1 and 2 were examined on 06.06.2017 and thereafter PW3 was examined on 18.07.2017. The petition to recall the above witnesses in C.M.P.No.6303 of 2017 in C.C.No.237 of 2016 was filed on 29.08.2017. Therefore, there is no delay on the part of the petitioner.

5.In the light of the aforesaid fact that there is no delay on the part of the petitioner and to provide an opportunity to the petitioner, in the interest of justice, this petition can be allowed.

6.At this stage, the learned Additional Public Prosecutor appearing for the first respondent submits that the above said case is posted on 29.05.2018 for examination of other witnesses. On that date, the petitioner can cross-examine PWS1 to 3 and no further time will be granted to cross examine the aforesaid witnesses.

7.In view of the submission made by the Additional Public Prosecutor, this petition is allowed and the order passed in C.M.P.No.6303 of 2017 in C.C.No.237 of 2016 dated 03.03.2018 on the file of the Judicial Magistrate Court No.II, Nagercoil is set aside. The learned Judicial Magistrate is directed to permit the petitioner to recall PW.S 1 to 3 and cross examine them on 29.05.2018 and no further time will be given to cross examine PWS1 to 3.

8.This Criminal Original Petition is allowed accordingly. Consequently, Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court No.II,
Nagercoil.

2. The Sub-Inspector of Police,
Kottar Police Station,
Kanyakumari District.



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

+1CC to Mr.B.Tamil Nidhi, Advocate in SR.No.62909.

TSG

DS/SV/MMS/SAR-3 :22.05.2018: 3P/5C

Order made in
CRL.O.P. (MD) No.6385 of 2018
and
CRL.MP. (MD) No.3026 of 2018
23.04.2018