



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.16036 of 2017

Kasimayan

... Petitioner/Petitioner/Accused (Single)

-Vs-

The State represented by
The Inspector of Police,
Kadupatti Police Station,
Madurai District.
(Cr.No.9 of 2016)

... Respondent/Respondent/ Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the order pass by the III Additional District & Sessions Judge (PCR), Madurai, Madurai District in Crl.M.P.No.1711 of 2017 in Spl.S.C.No.73 of 2016 vide his order dated 28.09.2017 and set aside the same.

For Petitioner : Mr.M.Pitchai Muthu

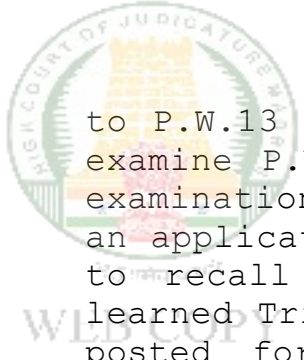
For Respondent : Mr.Prabu Ramachandran
Government Advocate(Crl.side)

O R D E R

This petition has been filed by the accused to set aside the order passed by the learned III Additional District and Sessions Judge (PCR), Madurai, in Crl.M.P(MD).No.1711 of 2017 in Spl.S.C.No.73 of 2016, dated 28.09.2017.

2.The brief facts of the case are as follows:-

The respondent herein has filed a charge sheet against the petitioner under Sections 296(1), 323 IPC Section 3(1) (X) of SC/ST Act and Section 4 of TNPPDL Act or in alternative Section 427 of IPC. Based on the said charge sheet, the case was taken on file in Spl.S.C.No.73 of 2016 on the file of the III Additional District and Sessions Judge (PCR), Madurai and after framing the charges, the case was taken up for trial. During the trial, P.W.1



to P.W.13 were examined, but the petitioner herein did not cross-examine P.W.1 to P.W.5, P.W.9, P.W.12 and P.W.13, when the Chief examination was recorded. Subsequently, the petitioner has filed an application under Section 311 Cr.P.C in Cr.M.P.No.1711 of 2017, to recall the aforesaid witnesses for cross-examination. The learned Trial Judge, taking into consideration already the case is posted for cross-examination of defence witnesses, has passed conditional order stating that the said petition will be allowed on payment of cost of Rs.500/- each PW1 to PW.5, Rs.2,000/- to P.W.12 and Rs.1,500 to P.W.13 on or before 27.09.2017, failing which, the said petition shall stand dismissed and posted the said petition for further orders on 28.09.2017. On 28.09.2017, since the petitioner has not complied with the aforesaid conditional order, the learned Trial Judge has dismissed the said petition. Aggrieved by the same, the petitioner has filed the present petition under Section 482 Cr.P.C.

3.The learned counsel appearing for the petitioner has submitted that the petitioner is a poor coolie and hence, he did not comply with the order passed by the learned Trial Judge and hence, he requested this Court to set aside the aforesaid conditional order.

4.The learned Government Advocate (crl.side) has submitted that even though the petitioner was given sufficient opportunity to cross-examine the witnesses, he has not cross-examined the witnesses. When the case was posted for examination of defence witnesses, the petitioner has filed a petition under Section 311 of Cr.P.C in Cr.M.P.No.1711 of 2017 to recall the aforesaid witnesses. He further submitted that even though the prosecution has strongly opposed the said petition, with a view to give an opportunity to the petitioner to cross-examine those witnesses, the Trial Court Judge has passed a conditional order. But the petitioner, without complying the said order, filed the present petition with a view to drag on the proceedings and hence, he strongly opposed this petition.

5.Taking in to consideration the fact that P.W.1 and P.W.2 were examined on 07.02.2017, P.W.3 and P.W.4 were examined on 21.02.2017 and P.W.5 was examined on 21.03.2017 and also the fact that till the case reached the stage of defence side evidence, the petitioner has not taken any steps to recall the aforesaid witnesses for the purpose of cross-examination, I am of the view that the order passed by the Trial Court is perfectly correct and it does not require any interference by this Court and I do not find any infirmity in the said order and therefore, the petitioner is directed to comply with the order of the Trial Court and he has to deposit the amount, which is mentioned by the Trial Court in <https://hcdes.com/decn/cr/cr1711> 07.09.2017, on or before 08.02.2018. If the petitioner deposits the said amount within the time fixed by this Court, then the Trial Court can recall the aforesaid witnesses and



give an opportunity to the petitioner to cross-examine those witnesses. Further, the petitioner should not ask any more adjournments.

6. With the aforesaid observation, this petition is disposed of.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District & Sessions Judge (PCR),
Madurai.

2. The Inspector of Police,
Kadupatti Police Station,
Madurai District.

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

+1CC TO M/S.M.PITCHI MUTHU, ADVOCATE, SR NO.44341

Cr1.O.P.(MD) No.16036 of 2017
25.01.2018.

rmk

MS/CM-VR/SAR.4/06.02.2018/3P.5C