



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Cr1.O.P.(MD) No.16153 of 2017  
and  
Cr1.M.P.(MD) 10701 of 2017

R.Ganesan

...Petitioner

Vs.

1.The State represented by  
The Inspector of Police,  
All Women Police Station,  
Uthamapalayam,  
Theni District.  
(Crime No.10 of 2013)

2.Vimalan

3.Dharmaraj

4.Thilagarani

5.Logendran

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Uthamapalayam, Theni District vide order in CRL.M.P No. 7516/2017 dated 20.11.2017 in C.C No. 119/2014 pending on the file of the said learned Magistrate and set aside the same.

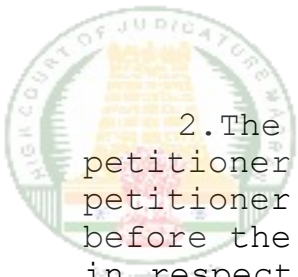
For Petitioner :Mr.R.Anand

For R1 :Mr.K.K.Ramakrishnan  
Additional Public Prosecutor

For R2 to R5 :Mr.A.K.Manickam

O R D E R

This criminal original petition has been filed to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Uthamapalayam, Theni District in CRL.M.P.No. 7516/2017 dated 20.11.2017 in C.C No. 119/2014 pending on the file of the said learned Magistrate and to set aside the same.

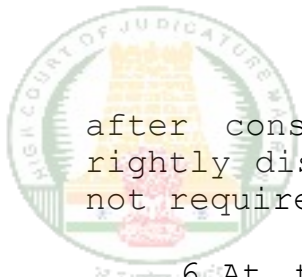


2.The learned counsel for the petitioner submitted that the petitioner has filed the present petition stating that the petitioner's daughter namely, Amutha, has preferred a compliant before the first respondent as against the respondents 2 to 5 herein in respect of demand of dowry. Based on the same, a case has been registered in Cr.No.10 of 2013 by the first respondent police. After completing investigation, charge sheet has been laid before the Judicial Magistrate Court, Uthamapalayam and the same has been taken on file in C.C.No.119 of 2014 and in order to quash the same, the respondents 2 to 4 have filed a quash petition before this Court in Crl.O.P.(MD) No.10716 of 2017 and on 16.08.2017 the said quash petition was withdrawn by them with a direction to the Judicial Magistrate, Uthamapalayam to dispose of C.C.No.119 of 2014 within a period of three months from the date of receipt of a copy of the order and granted relief with regard to dispense with the personal appearance of the accused Nos.2 and 3 before the trial Court. Further it is submitted that the petitioner's daughter / complainant is an IT employee working at Infosys Private Limited and now, she is working at USA. The Judicial Magistrate has fixed the date for trial in C.C.No.119 of 2014 and compelled the petitioner's daughter to appear before the trial Court. But, due to some practical difficulty, the petitioner's daughter was not able to come down to Tamil Nadu to appear before the trial Court for trial. Therefore, the petitioner has filed a petition in Cr.M.P.No.7516 of 2017 under Section 309 Cr.P.C., for the purpose of adjourning the date of hearing of the said case, but the Court below has dismissed the petition. Hence, the present Criminal Original Petition has been filed before this Court.

3.The learned counsel appearing for the respondents 2 to 5 submitted that the contract period of the petitioner's daughter was over in the last week of March, 2018 and now she can very well appear before the trial Court for examination and the petitioner cannot seek postponement of the trial by filing petitions one after another.

4.The learned Additional Public Prosecutor would also submit that the petitioner has no locus standi to file the present petition, seeking adjournment of the case and hence, the present criminal original petition is liable to be dismissed.

5.The petitioner is L.W.2 in C.C.No.119 of 2014 and witness warrant is pending against L.W.2 and L.W.3. The facts of the present case is that the petitioner's daughter is under the employment of an I.T.Company at U.S.A. and she has entered into a contract for a specific period and the said contract period is said to be concluded in the last week of March 2018. In such circumstances, this Court is of the view that if the petitioner's daughter has any difficulty to appear before the trial Court due to some unavoidable circumstances, she can make application before the Court below seeking adjournment of the date of hearing of the case and the petitioner has no locus standi to file any petition seeking such relief. The Court below



after considering the facts and circumstances of the case, has rightly dismissed the said application and therefore, the same does not require any interference of this Court.

6. At this juncture, it is useful to rely upon the provision under Section 242 Cr.P.C., which is extracted as follows:-

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241 the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

7. As per the said provision, on the application of the prosecution, the Judicial Magistrate can issue summons to any of the witnesses directing them to provide instructions and also to produce the relevant documents and the petitioner cannot file any petition seeking postponement of trial till the petitioner's daughter is appeared for trial. Further, the reason assigned by the petitioner that her daughter cannot breach the contract is not acceptable, since the contract period of the petitioner's daughter is already over in the last week of March, 2018.

8. Therefore, in view of the aforesaid provision under Section 242 Cr.P.C., as well as the facts and circumstances of the case, there is no error in the order passed by the Court below. Hence, this criminal original petition is dismissed and the order passed by the Judicial Magistrate, Uthamapalayam Theni District in CRL.M.P.No.7516 of 2017 dated 20.11.2017 in C.C No. 119/2014 is confirmed. Consequently, Crl.M.P.(MD) 10701 of 2017 is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)



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To  
1.The Judicial Magistrate,  
Uthamapalayam, Theni District.

2.The Inspector of Police,  
All Women Police Station,  
Uthamapalayam, Theni District.

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

+1cc to Mr.R.Anand, Advocate in SR No.73731

+1cc to Mr.A.K.Manickam, Advocate in SR No.73708

**Cr1.O.P. (MD) No.16153 of 2017**

NM/PM/SAR IV/27.10.18/4P/6C