



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD).No.16177 of 2017

WEB COPY

1. Dinakaran
2. Eswaran
3. Gunasekaran
4. Parameswaran
5. Chinnamuthiah
6. Karthick

. . Petitioners /Accused

Vs.

State through,
The Sub Inspector of Police,
Gudalur South Police Station,
Theni District.

(Crime No.96 of 2010)

. . Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam, in Cr.M.P.No.5913 of 2017, dated 03.10.2017, in C.C.No.626 of 2010 and to direct the learned Judicial Magistrate, Uthamapalayam, to recall P.W.1 to P.W.7 and to cross examine in C.C.No.626 of 2010 on the file of the learned Judicial Magistrate, Uthamapalayam.

For Petitioners

: Mr.S.Karthick

For Respondent

: Mr.K.S.Durai Pandiyan,
Additional Public Prosecutor.

ORDER

This Criminal Original petition is filed to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam, in Cr.M.P.No.5913 of 2017 in C.C.No.626 of 2010, dated 03.10.2017 and to direct the learned Judicial Magistrate, Uthamapalayam, to recall the witnesses P.W.1 to P.W.7 and to cross examine them in C.C.No.626 of 2010.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

3. The petitioners are the accused in the criminal case in C.C.No.626 of 2010 pending on the file of the learned Judicial Magistrate, Uthamapalayam. The petitioners have filed a petition in Cr.M.P.No.5913 of 2017 under Section 311 of Cr.P.C., to recall and to cross examine the witnesses P.W.1 to P.W.7.

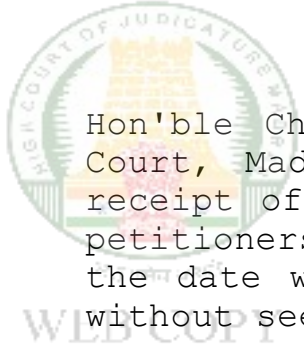


4. It appears that the petitioners have obtained the copies of the documents which were filed in the criminal case even in the year 2011 and the witnesses P.W.1 to P.W.7 were examined in the year 2011 itself. However, the petitioners did not examine any of the witnesses. It is only after the lapse of five years, the petition has been filed under Section 311 of Cr.P.C., to recall the witnesses for the purpose of cross examination. The lower Court dismissed the said application on the ground that the delay of more than five years in filing the petition has not been explained by the petitioners. Though the reason stated by the lower Court for dismissing the petition is justified, serious prejudice is likely to be caused to the petitioners.

5. No doubt, it is true that the petitioners are expected to be vigilant in defending the criminal case. Since the witnesses P.W.1 to P.W.7 were examined in the year 2011 and the petition is filed by the petitioners to recall the witnesses for cross examination after the lapse of five years, the matter has to be considered with reference to various circumstances. The petitioners stated in the petition that the petitioners could not cross examine the witnesses P.W.1 to P.W.7, as they were in search of some of the documents which are important and relevant. The lower Court did not accept to excuse the huge delay of more than five years on the ground that the documents which were filed on behalf of the prosecution were given to the petitioners' counsel in the year 2011 itself. The reason given by the lower Court is not correct. The petitioners have not stated that they have mentioned about some documents which were already filed in this case to cross examine the witnesses. Though the details of the documents are not available in the affidavit filed in support of the petition filed under Section 311 of Cr.P.C., the learned counsel for the petitioners expressed before this Court that the documents referred to in the petition are some other official documents.

6. It is a well settled position of law that a fair opportunity should be given to the accused in defending the criminal cases. If the witnesses, namely, P.W.1 to P.W.7 are not examined, serious prejudice will be caused to the petitioners and this cannot be ignored. It will be taken that the petitioners have no defence.

7. Having regard to the facts and circumstances of this case, this Court is inclined to allow this petition subject to terms. Hence, the Criminal Original petition is allowed and the order passed by the learned Judicial Magistrate, Uthamapalayam, in Cr.M.P.No.5913 of 2017 in C.C.No.626 of 2010, dated 03.10.2017 is set aside and the petition filed by the petitioners in Cr.M.P.No.5913 of 2017 in C.C.No.626 of 2010 stands allowed, subject to the condition that the petitioners shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the



Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of two weeks from the date of receipt of a copy of this order and a further condition that the petitioners shall cross examine the witnesses P.W.1 to P.W.7 on the date when the witnesses are available for cross examination, without seeking any further adjournment on any reason.

8. Post the matter on 12.12.2017, for reporting compliance.
Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Uthamapalayam.
2. The Sub Inspector of Police,
Gudalur South Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

1. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

(Post the matter on 12.12.2017, for reporting compliance)

+1cc to Mr.S.Karthick, Advocate Sr.No.89495

PMU

VB/KP/SAR1/13/12/2017/3P/7C

Cr1.O.P. (MD) .No.16177 of 2017
27.11.2017