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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

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THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD)No.17345 of 2017

and

Crl.M.P.(MD).No.11369 of 2017

E.Surendran

... Petitioner/Petitioner/Sole Accused

Vs.

The State Rep. by
The Sub Inspector of Police,
Chinnamanur Police Station,
Uthamapalayam Taluk,
Theni District.
(Crime No.477/2011)

... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order, dated 10.10.2017 made in Crl.M.P.No.5460/2017 in C.C.No.259/2012 on the file of the learned Judicial Magistrate, Uthamapalayam, Theni District.

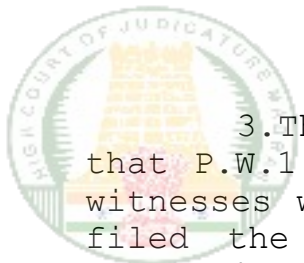
For Petitioner : Mr.P.Mahendran

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the accused to set aside the order dated 10/10/17 passed by the Judicial Magistrate, Uthamapalayam, in Crl.M.P.No.5460/2017 in C.C.No.259/2012.

2.The learned counsel for the petitioner has submitted that the petitioner is facing the trial for the alleged offences under sections 279, 338 and 304 A of IPC. He further submitted that on the side of the prosecution nine witnesses were examined before the Trial Court. Since the petitioner's counsel was out of station those witnesses were not cross examined on the same day. The petitioner has filed a petition under Section 311 Cr.P.C in Crl.M.P.5460/17 to recall the P.W.1 to P.W.9. But the Judicial Magistrate without considering the petitioner's request has dismissed the said petition on 10.10.2017. He further submitted that since those witnesses are material witnesses, unless those witnesses are cross examined the petitioner will put to irreparable



3.The learned Government Advocate (Crl. Side) has submitted that P.W.1 to P.W.4 were examined in chief on 19.01.2015 and other witnesses were examined on different dates. But the petitioner has filed the petition under section 311 of Cr.P.C to recall the aforesaid witnesses after 2 ½ years by saying that his counsel was out of station. In the petition, he has not stated any reason for filing the said petition after 2 ½ years. He further submitted that already the accused was questioned under section 313 of Cr.P.C and now, the case is posted tomorrow for judgment and hence he strongly opposed this petition.

4.A perusal of the petition filed by the petitioner in Crl.M.P.5460/17 shows that P.W.1 to P.W.4 were examined on chief on 19.01.2015, P.W.5 & P.W.6 were examined on 06.10.2015, P.W.7 was examined on 02.04.2016, P.W.8 was examined on 14.02.2017 and P.W.9 was examined on 20.03.2017. According to the petitioner, on those days the petitioner's counsel was engaged in other courts. Though the aforesaid witnesses were not examined on different aspects, the petitioner's counsel has not cross examined any of the witnesses. Even if the contention of the petitioner is accepted for argument sake, that his counsel is engaged in other court he should have made arrangement for cross examination of the witnesses through another Advocate. Further the petitioner has not stated any reason for filing the petition to recall those witnesses after 2 ½ years. It appears that when the case was posted for defence side evidence, the petitioner has filed the petition to recall all the prosecution witnesses. So, there is no bonafide on the part of the petitioner. However, considering the fact that the petitioner is facing the trial for the offences under sections 279, 338 and 304 A of IPC, this court is of the view some leniency may be shown to him by imposing some stringent conditions.

5.In the result, this petition will be allowed on deposit of Rs.25,000/- before the Trial Court on or before 15.03.2018. If the petitioner has deposited the aforesaid amount before the Trial Court, the trial Court has to recall the PWs 1 to 9 and give an opportunity to the petitioner to cross examine them and disburse the said amount to PWs 1 to 9 proportionately. If the petitioner failed to deposit the amount within the stipulated time this Criminal Original Petition shall stand dismissed automatically. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate, Uthamapalayam.

2.The Sub Inspector of Police,

<https://hcservices.ecourts.gov.in/hcservices/>

Chinnamandur Police Station,

Uthamapalayam Taluk, Theni District.



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

+1cc to Mr.P.MAHENDRAN, Advocate, SR. 52042

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28.02.2018

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