



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRL.O.P.(MD)No.10468 of 2018

and

CrI.M.P.(MD)No.4687 of 2018

Satheeshkumar

... Petitioner

-vs-

The State Represented by
The Inspector of Police,
Anjugramam Police Station,
Nagercoil,
Kanyakumari District.

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 16.03.2017 passed in CrI.M.P.No.164 of 2016 in S.C.No.131 of 2016 on the file of the II Additional Subordinate Judge, Nagercoil, Kanyakumari District.

For Petitioner : Mr.K.Ramamurthy
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

ORDER

This petition has been filed praying this Court to call for the records and set aside the order, dated 16.03.2017 passed in CrI.M.P.No.164 of 2016 in S.C.No.131 of 2016 on the file of the II Additional Subordinate Judge, Nagercoil, Kanyakumari District.

2.The learned counsel appearing for the petitioner would submit that the petitioner has filed a petition under Section 311 of Cr.P.C., in CrI.M.P.No.164 of 2016 in S.C.No.131 of 2016 before the II Additional Subordinate Judge, Nagercoil, Kanyakumari District. He further submitted that P.W.1 to 4 were examined on 15.09.2016 and on that day, the petitioners were unable to collect the particulars of the witnesses and due to the same, they are unable to cross-examine P.W.1 to 4. The said application was dismissed by the Trial Court on the ground that the said application was not filed on very next hearing and it was filed only after 5 adjournments with untenable reasons. Aggrieved against the said order of dismissal, the



petitioner has filed the present Criminal Original Petition.

3. The learned Counsel appearing for the petitioner would further submit that though P.W.1 to 4 were examined in the year 2016, now, he came to know about some relevant facts and therefore, it is necessary to recall the said witnesses for cross examination, hence, sufficient reasons have also been stated in the application to recall the witness. Despite the same, the Court below, without considering the said facts and also without giving any opportunity to the petitioner, has erroneously dismissed the application and therefore, he prays for interference at the hands of this Court.

4. The learned Additional Public Prosecutor would submit that the trial Court has considered the decision of the Hon'ble Supreme Court of India in **Vinod Kumar v. State of Punjab reported in (2015) 3 Supreme Court Cases 220** and dismissed the application.

5. Considering the facts and circumstances of the case and also considering the fact that the P.Ws.1 to 4 were examined on 15.09.2016 and on that day they were not cross-examined by the petitioner due to the reasons that he is not in a position to collect the particulars about the witnesses and thereafter, the petitioner filed an application on 01.12.2016 and hence, there is no delay and due to the bonafide reasons, the said application was filed on 01.12.2016. Therefore, the reasons stated in the petition cannot be rejected, in the interest of justice, by providing an opportunity to the petitioner, this Court is inclined to set aside the order passed by the II Additional Subordinate Judge at Nagercoil.

6. Accordingly, the this Criminal Original Petition is allowed by setting aside the order passed by the II Additional Subordinate Judge at Nagercoil in CrI.M.P.No.164 of 2016 in S.C.No.131 of 2016. The learned II Additional Subordinate Judge at Nagercoil is directed to dispose of the S.C.No.131 of 2016, as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge,
Nagercoil, Kanyakumari District.



2. The Inspector of Police,
Anjugraman Police Station,
Nagercoil,
Kanyakumari District.

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

+1 CC to Mr.K.RAMAMOORTHY, Advocate in SR.No.70008

AM

RJ/SV/SAR-3/16/07/2018 - 3P/5C

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