



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CrI.O.P. (MD) .No. 10915 of 2018

and CrI.M.P (MD) No.4930 of 2018

Anto Charlas

...Petitioner

Vs.

The Sub-Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.
(Crime No.510/2010)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records of the order dated 07.03.2018, in C.M.P. No.919 of 2018 in C.C.No.302 of 2010, on the file of the learned Judicial Magistrate, Padmanabhapuram, and set aside the same by allowing this Criminal Original Petition.

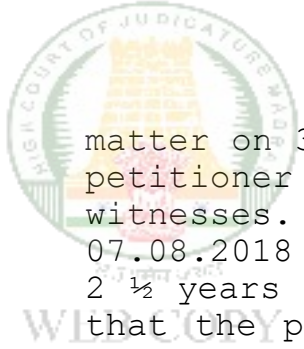
For Petitioner : Mr.K. Sivabalan for
M/s. G. Aravinthan

For Respondent : Mr.A. Robinson,
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed seeking direction to call for the records of the order dated 07.03.2018, in C.M.P. No.919 of 2018 in C.C.No.302 of 2010, on the file of the learned Judicial Magistrate, Padmanabhapuram, and set aside the same by allowing this Criminal Original Petition.

2. The learned Counsel for the petitioner would submit that the petition has been filed to set aside the order dated 07.03.2018 in C.M.P. No.919 of 2018 in C.C.No. 302 of 2010 on the file of the learned Judicial Magistrate, Padmanabhapuram, wherein the learned Magistrate dismissed the petition to recall the witnesses P.W.1 to P.W.3 who were examined on 10.08.2015. He would further submit that the calendar case is pending from the year 2010 and the petitioner/accused has been regularly appearing before the Court and that on 10.08.2015, the witnesses P.W.1 to P.W.3 were examined in chief. He would also submit that due to the petitioner's personal inconvenience, he was unable to cross examine P.W.1 to P.W.3 on the same day and thereafter the case has been posted for cross examination on the subsequent dates and till date they have not been examined. He would further submit that the Court has posted the



matter on 30.12.2018 for examination of L.W.4 to L.W.6 and that the petitioner had filed a petition on 26.02.2018 to recall the witnesses. The learned trial Judge had dismissed the petition on 07.08.2018 stating that the petitioner has been filed after lapse of 2 ½ years and that several opportunities were available to him and that the petitioner had not availed the opportunities. The learned Counsel would also submit that P.W.1 to P.W.3 are important witnesses and if the petition is not allowed and P.W.1 to P.W.3 are not recalled and it will be a case of no defence and that the petitioner will be gravely prejudiced. He would also submit that the petition may be allowed on imposition of cost and terms and the order passed by the learned Magistrate may be set aside and the petitioner may be permitted to recall the witnesses.

3. Heard the learned Government Advocate (Criminal Side) appearing for the respondent.

4. I have perused the order dated 07.03.2018, I find no illegality or error in the order passed by the learned Magistrate. He had rightly contended that the petition has been filed after lapse of 2 ½ years and that the petitioner has failed to avail so many opportunities given to him. The learned Magistrate has followed the mandate of the Apex Court in Vinod Kumar Vs. State of Panjab. However, this Court is of the opinion that if P.W.1 to P.W.3 are not recalled and cross examined, it will be a no case of no defence causing prejudice to the petitioner and that the petition may be allowed imposing cost and fixing terms.

5. This Court enquired the learned Government Advocate (Criminal Side) about the availability of the witnesses and he would submit that the witnesses are available in station and that if an order is passed the respondents will be able to produce the witnesses before the Court for cross examination.

6. In view of the above, the learned Magistrate is directed to recall the witness P.W.1 to P.W.3 on a particular date. The learned counsel for the petitioner shall cross examine the witnesses on the same day without taking any further adjournments. The witnesses shall be furnished with the copy of the deposition so as to refresh their memory before cross examination. This Court also imposes a cost of Rs.8000/- (Rupees Eight Thousand Only) on the petitioner, out of which, a sum of Rs.1000/- shall be paid to the each witness (Totally Rs.3000/-) on the date of examination and the amount of Rs.5000/- shall be paid to the High Court Legal Services Authority and the receipt shall be furnished to the trial Judge before the examination of witnesses.



7. With the above directions, the Criminal Original Petition is closed. Consequently, connected Miscellaneous Petition is closed.

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ASSISTANT REGISTRAR (AD I)
TRUE COPY

WEB COPY

SUB ASSISTANT REGISTRAR (CS I)

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To

1. The Judicial Magistrate, Padmanabhapuram,
2. The Officer Incharge, High Court Legal Service Authority,
Madurai Bench of Madras High court,
Madurai.
3. The Sub-Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.

COPY TO:.. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

1CC TO MR. G. ARAVINTHAN, ADVOCATE SR 97544

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