

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 04.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.15705 of 2018

Idhayathullah

... Petitioner/Petitioner/Accused

Vs.

State rep., by
The Inspector of Police,
Thiruvarankurichi Police Station,
Thiruvarankurichi,
Trichy District.
(Crime No.623 of 2015)

...Respondent/Respondent/Complainant

PRAYER: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Learned Judicial Magistrate, Manapparai in Cr.M.P.No.820 of 2018 in C.C.No.75 of 2016 dated 15.03.2018 by allowing this Criminal Original Petition.

For Petitioner: Mr.M.Karunanithi

For Respondent: Ms.S.Bharathi,
Government Advocate(Crl.,Side)

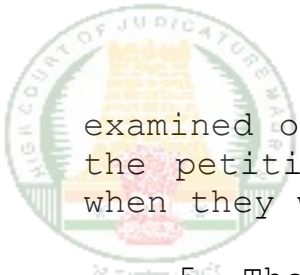
ORDER

This Criminal Original Petition has been filed to to set aside the order passed by the Learned Judicial Magistrate, Manapparai in Cr.M.P.No.820 of 2018 in C.C.No.75 of 2016 dated 15.03.2018 by allowing this Criminal Original Petition.

2. Heard learned counsel appearing for the petitioner and learned Government Advocate (Crl.Side) for the respondent and perused the materials placed on record.

3. This petition has been filed to set aside the order passed by the Learned Judicial Magistrate, Manapparai, dismissing the application filed under Section 311 of Cr.P.C. to recall and cross examine P.W.1 and 2.

4. The learned counsel appearing for the petitioner would submit that, the petitioner is facing the trial for offences under Section 12(1) (b) of Passport Act, 1967. In this case, P.W.1 was



examined on 22.05.2017 and P.W.2 was examined on 18.01.2018, but the petitioner failed to cross examine P.W.1 and 2 on the date, when they were examined in chief.

5. The petitioner filed an application before the Court below, to recall P.W.1 and 2 for cross-examination and the same was dismissed by the Court below. The Court below has found that there has been a delay of more than 10 months in filing the petition for recall and the petitioner has not given any reason, as to why P.W.1 and 2 were not cross examined within the specified time.

6. From the final report, it is clear that, there were three witnesses in this case on the side of the prosecution and two witnesses have already been examined.

7. In order to give a final chance to the petitioner, this Court is of the view that, the order of the Court below should be interfered with. The order of the Court below in Cr.M.P.No.820 of 2018 is hereby set aside. The Court below shall fix a date for appearance of the witnesses. Before putting the witness in the box, they will be provided with the depositions, so that they can refresh their memory and only thereafter, they can be subjected to cross-examination.

8. On the date when the witnesses appear, if the petitioner fails to cross examine them, the petitioner will forfeit his right to recall them again. The petitioner shall pay a cost of Rs.1,000/- (Rupees Thousand only) to each of the witnesses, when they come for giving evidence. It is also made clear that all other witnesses, who will be examined in favour by the prosecution, shall be cross examined by the petitioner on the very same day when they are examined in chief. Accordingly, this Criminal Original Petition is allowed with the above directions.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1) The Judicial Magistrate,
Manapparai.

2) The Inspector of Police,
Thiruvananthapuram Police Station,
Thiruvananthapuram,
Trichy District.



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

WEB COPY

+ 1 CC TO MR.M.KARUNANITHI, ADVOCATE IN SR NO.82693

STS

BU/SKN/SAR-I : 27.09.2018 : 3P/5C

Order made in
Crl.O.P. (MD) No.15705 of 2018
04.09.2018