



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WEB COPY

Crl.O.P.(MD).No.15956 of 2018
and
Crl.M.P.(MD).No.7073 of 2018

Santhosh ...Petitioner / Petitioner /Sole Accused
Vs.

State represented by
The Sub Inspector of Police,
Kotticode Police Station,
Kanyakumari District. ...Respondent/ Respondent / Complainant
(Originally in Crime No.85 of 2003
on the file of the Thucukalay Police Station)

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order dated 11.07.2018 passed in C.M.P.No.2726 of 2018 in C.C.No.168 of 2004 on the file of the learned Judicial Magistrate No.I, Padmanabapuram, Kanyakumari District.

For Petitioner :Mr.A.Thiruvadi Kumar

For Respondent :Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. side)

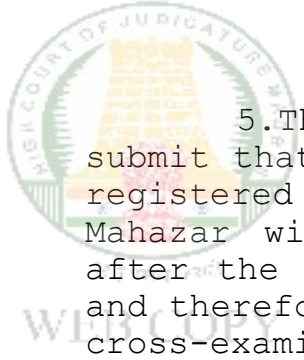
O R D E R

This Petition has been filed against the dismissal of an application filed under Section 311 Cr.P.C. by the learned Judicial Magistrate No.I, Padmanabhapuram.

2.Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the respondent.

3.The petitioner is facing trial before the Court below for an offence under Sections 279 and 304(A) I.P.C.

4.The prosecution has examined five witnesses and the case is being adjourned from time to time from the year 2010 onwards for the prosecution to examine the remaining witnesses. At this point of time, the petitioner who is the accused in the case filed an application in C.M.P.No.2726 of 2018 under Section 311 Cr.P.C to recall and cross examine PW1, PW4 and PW5. The Court below dismissed the said petition on the ground that the petition filed by the accused did not contain any reason as to why the witnesses were not examined for more than seven years.



5. The learned counsel appearing for the petitioner would submit that PW.1 is the eye witnesses. PW.4 is the Police, who had registered the First Information Report. P.W.5 is the Observation Mahazar witness. The learned counsel would further submit that after the year 2010, the prosecution has not examined any witness and therefore one last opportunity can be given to the petitioner to cross-examine PW1 and PW5. The learned counsel would further submit that the petitioner is facing charge under Section 304 (A) I.P.C and therefore in order to effectively defend himself, the petitioner must be given opportunity to cross-examine the eye witness viz., P.W.1.

6. Per contra, the learned Government Advocate (Crl. side) would submit that the prosecution had examined five witnesses and the case is posted on 25.09.2018 for the examination of further witnesses. The learned Government Advocate (Crl. side) also would submit that eighteen witnesses have been shown in the final report.

7. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that the petitioner can be given one more opportunity to recall and cross-examine P.W.1 and P.W.5.

8. In view of the above, the order of the learned Judicial Magistrate No.1, Padmanabhapuram, made in C.M.P.No.2726 of 2018 dated 11.07.2018 is hereby set aside. The Court below shall fix the date for appearance of P.W.1 and P.W.5. Since they have given evidence in the year 2010, before putting the witness in the box, they shall be furnished with the deposition, so that they can refresh their memory and only thereafter, they can be subjected to cross-examination. On the date when the witnesses appear, if the petitioner fails to cross-examine them, the petitioner will forfeit his right to recall the witnesses again. The petitioner shall pay a cost of Rs.1,000/- (Rupees One Thousand only) to each of the witnesses when they come for giving evidence.

9. The Criminal Original petition is allowed in the above terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate No. I, Padmanabhapuram,
Ranchi District.



2.The Sub Inspector of Police,
Kotticode Police Station,
Kanyakumari District.

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

+1CC TO MR.A.THIRUVADI KUMAR, ADVOCATE IN SR.NO.82652.

TSG

DS SV SAR-1 15.10.2018 3P/5C

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