



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.[MD].No.16140 of 2018
and
CrI.M.P(MD)No.7154 of 2018

S.Manikandan

: Petitioner

Vs.

State represented through
Sub Inspector of Police,
Kuzhithurai Police Station,
Kanyakumari District.
(Crime No.282 of 2006)

: Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in CrI.M.PNo.8921 of 2007 in C.C.No.268 of 2006 on the file of the Judicial Magistrate Court No.I, Kuzhithurai, Kanyakumari District, dated 15.12.2017 and to set aside the same as illegal.

For Petitioner : Mr.S.Saji Bino
For Respondents : Mr.K.Suyambylinga Bharathi
Government Advocate (Criminal side)

ORDER

This Criminal Original Petition has been filed by the petitioner against the dismissal of application filed under Section 311 of Cr.P.C., to re-call and cross examined to P.W.1.

2.From the records, it is found that P.W.1 was examined on 11.11.2009. However, the petitioner did not cross examine P.W.1. Subsequently all the other witnesses were also examined and all these witnesses were cross examined by the petitioner. The case is at the stage of questioning under Section 313 of Cr.P.C. At this stage, the petition has been filed for re-calling P.W.1 for cross examination.

3.The Court below has dismissed the petition on the ground that there is a delay of 8 years in filing the petition to re-call P.W.1 for cross examination. Therefore, the court has come to the conclusion that the petition has been filed only to drag on the



proceedings.

4.The petitioner is facing trial for an offence under Sections 341, 323, 325 of I.P.C. P.W.1, is the defacto complainant and he is the main witness. The counsel for the petitioner did not cross examine this witness, when he was examined in Chief. This Court is of the view that one last opportunity can be given to the petitioner to cross examine P.W.1.

5. Accordingly, the order of the Court below made in CrI.M.P.No.8921 of 2007 in C.C.No.268 of 2006 dated 15.12.2017, on the file of the Judicial Magistrate Court No.1, Kuzhuthurai, Kanyakumari District, is set aside. The Court below shall fix the date for the appearance of the P.W.1 on 27.09.2018. Before putting the witness under the witness box, P.W.1 shall furnish with the deposition so that he can refresh memory and only thereafter, he can be subjected to cross examination. On the date when P.W.1 appears, if the petitioner fails to cross examine him, the petitioner shall forfeit his right to re-call P.W.1 again. The petitioner shall pay a cost of Rs.5,000/- to P.W.1, when he comes for giving evidence.

6.The Court below is further directed to complete the proceedings on or before 31.10.2018 and report before this Court.

7.This Criminal Original Petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Judicial Magistrate No.I,
Kuzhithurai, Kanyakumari District.
2. The Sub Inspector of Police,
Kuzhithurai Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.SAJI BINO, ADVOCATE IN SR No. 83176

DAS

TE/RSK/SAR-4 : 14/09/2018 : 2P/5C