



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.10.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.17123 of 2018
and
Crl.M.P(MD) No.7582 of 2018

Manikandan ... Petitioner/Accused NO.2
Vs.

1. The State through
The Sub Inspector of Police
Town South Police Station
Dindigul
Dindigul District
Crime No.483 of 2011 ..1st Respondent/Complainant

2. Murugan ...2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in J.C.No. 14 of 2014 pending on the file of the learned Principal Magistrate, Juvenile Justice Board, Dindigul as against this petitioner /Accused No.2 is concerned.

For Petitioner	: Mr.D.Selvaraj
For Respondent	: Mr.K.Suyambulinga Bharathi
No.1	Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in JC No. 14 of 2014 pending on the file of the learned Principal Magistrate, Juvenile Justice Board, Dindigul.

2. This petition has been filed mainly on the ground that the petitioner was a juvenile at the time of occurrence and he never had assistance or aid of counsel till evidence of PW.1 to 9 were recorded by the trial court. Therefore according to the petitioner he had been deprived of his right to be defended and therefore the entire evidence of PW 1 to 9 has to be eschewed.

3. When the matter was taken up at the time of admission, this court passed the following order :

<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the petitioner would submit that the petitioner was a juvenile on the



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date of commission of the offence. The petitioner is facing trial before the Juvenile Court for an offence under Section 341, 302 r/w 34 I.P.C. Apart from the petitioner, there are two other accused persons, who are facing trial before the learned Principal District Court, Dindigul.

2.The learned counsel for the petitioner would further submit that the petitioner did not have the assistance of an advocate before the court at the time, when the trial was conducted. The Court below did not inform the petitioner about his right to be represented by a lawyer in the course of the proceedings. Therefore, the learned counsel for the petitioner would further submit that P.W.1 to P.W.9 have already been examined in Chief and during the entire course of examination, the petitioner never had the assistance of an advocate .

3.The learned counsel for the petitioner would further submit that now, the petitioner has got an assistance of the counsel.

4. In order to know the correct facts, the learned Principal Magistrate Juvenile Justice Board, Dindigul, Dindigul District is directed to file a report before this Court, with regard to the proceedings in J.C.No.14 of 2014, on or before 08.10.2018.

5.Till the report is filed and further orders are passed, the learned Principal Magistrate Juvenile Justice Board, Dindigul, Dindigul District is directed to keep the proceedings in abeyance.

6.Post this matter on 09.10.2018".

4. The learned Principal Magistrate, Juvenile Justice Board, Dindigul has filed a report before this Court. The relevant portion of the said report is extracted here under:

" I most humbly submit that J.C 14/2014 was taken on file by the Juvenile Justice Board, Dindigul on 06.06.2014. Advocate Mr.A.Selvam was already appearing on behalf of the Juvenile Conflict with law before this board. After furnishing of copies summons was issued for examination of witness and PW 1 to 3 they were examined in chief on 13.07.2017. As a juvenile informed that his counsel was out of station it was recorded as no cross examination. Again on 17.08.2017 PW 4 to 7 were examined and juvenile conflict with law informed that his counsel was out of station and it was recorded as no cross examination. On 28.09.2017 juvenile conflict with law appeared along with his counsel and PW.8 and 9 were examined and counsel informed not to examine further witnesses till trial in S.C 50/14 on the file of the Principal Sessions



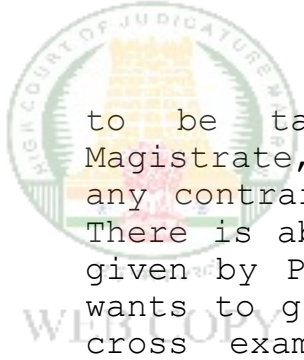
Court, Dindigul for the connected accused is completed. Hence, it was recorded as no cross examination and case was adjourned to 26.10.2017.

3. On 26.10.2017 the counsel filed a petition in CrI.M.P.205/2017 and sought for stay of further proceedings in this case till disposal of the connected case in S.C.50/2014 pending before the Principal Sessions Court, Dindigul. Further petitioner sought for one more prayer to eschew PW 1 to 7 as a counsel was not present at the time of chief examination. Arguments of the counsel was heard and this board dismissed the petition ordering stay cannot be granted till disposal of S.C 50/2014 before the Principal Sessions Judge, Dindigul. Further this board ordered that evidence of PW.1 to 7 cannot be eschewed as there was no provision for doing the same. In the alternative this board has discussed that in the absence of Sec.311 Cr.P.C petition for cross examination the prayer cannot be accepted so indirectly informed the counsel to file Sec.311 Cr.P.C petition for recall of witnesses for cross examinations. Without filing S.311 Cr.P.C petition the counsel has approached Hon'ble High Court to quash of proceedings of this board. Since no petition S.311 was filed by the counsel three or more witnesses 10 to 12 were examined. Further this case is being adjourned for examination of further witnesses and posted on 25.10.2018"

5. From the report filed by the learned Principal Magistrate, it can be seen that there was a counsel named A.Selvam who has appeared on behalf of the petitioner at the time of chief examination of PW 1 to 7. If counsel for the petitioner is not present before the Court, the court cannot be blamed. The petitioner should have taken effective steps to ensure that the counsel is present at the time of cross examination of witnesses for the prosecution. That apart when the witnesses were examined, the petitioner was aged about 23 years and he was in a position to understand his legal rights.

6. From the report, it can also be seen that the Advocate representing the petitioner had appeared before the court when PW 8 and 9 were examined and had informed the court below that the trial in this case should not be taken up till the completion of trial in S.C.No.50 of 2014. The counsel has also filed petition in CrI.M.P.No.205 of 2018 before the court below seeking for stay of all further proceedings in the case, till connected case in S.C.No.50 of 2014 is disposed of by the Principal Sessions Court, Dindigul.

7. This Court is not able to find any bonafides in the claim made by the petitioner. The happening in the court below will have



to be taken based on the report filed by the Principal Magistrate, Juvenile Justice Board, Dindigul. This Court cannot take any contrary view to the report filed by the Principal Magistrate. There is absolutely no ground to eschew the evidence that has been given by PW 1 to 9 before the court below. However, this court wants to give one more opportunity to the petitioner to recall and cross examine all the witnesses examined on the side of the prosecution. The court below shall permit the petitioner to cross examine all the prosecution witnesses by recalling them. It is made clear that the counsel for the petitioner shall cross examine the witnesses on the day when they appear before the court below and the court below shall ensure that no unnecessary adjournment is granted in this case and the proceedings are conducted on day to day basis.

8. The Criminal Original Petition is disposed of with the above directions. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Sub Inspector of Police
Town South Police Station
Dindigul, Dindigul District
 2. The Principal Magistrate,
Juvenile Justice Board, Dindigul
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO Mr.D.SELVARAJ , ADVOCATE IN SR No. 89794.

AAV

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Cr1.O.P. (MD) No.17123 of 2018
09.10.2018