



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.R.C.(MD)No.97 of 2018

Krishnan

: Petitioner

Vs.

State Represented by
The Sub-Inspector of Police,
Thalaiyuthu Police Station,
Crime No.69 of 2013.

: Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records relating to the order passed by the learned Judicial Magistrate No.III, Tirunelveli, in Crl.M.P.No.4829 of 2016 in C.C.No.28 of 2014, dated 09.01.2017 and set aside the same.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl.side)

ORDER

The petitioner is facing prosecution in C.C.No.28 of 2014 before the learned Judicial Magistrate No.III, Tirunelveli for the offences under Sections 279 and 304(A) of the Indian Penal Code. On 27.10.2014, the prosecution examined P.W.1 and P.W.2. After they were examined in chief, the lower Court counsel appearing for the petitioner did not cross-examine P.W.1 and P.W.2. Ultimately, when P.W.14, the Investigating Officer was examined in chief, counsel for the accused did not cross-examine P.W.14 on the ground that he has not cross-examined P.W.1 and P.W.2. Thereafter, the accused filed Crl.M.P.No.4829 of 2016 under Section 311 of the Code of Criminal Procedure for recalling P.W.1, P.W.2 and P.W.14, which has been dismissed by the Trial Court, by order dated 09.01.2017, challenging which, the petitioner has filed the present Criminal Revision Case with a delay of 175 days. This Court has condoned the delay of 175 days in Crl.M.P.(MD)No.1068 of 2018.

2. The learned counsel for the accused submitted that the accused may be given one opportunity to recall P.W.1, P.W.2 and P.W.14.



3. Per contra, the learned Government Advocate (Criminal side) refuted the contentions.

4. On a reading of the impugned order, it is clear that P.W.1 and P.W.2 were examined in chief on 27.10.2014. Till the Investigating Officer-P.W.14 was examined on 05.11.2016, the accused did not take any steps to file a petition to recall P.W.1 and P.W.2. Even, in the petition filed by the accused in CrI.M.P.No.4829 of 2016, he has not given any sound reasons for recalling P.W.1, P.W.2 and P.W.14.

5. In **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542**, the Supreme Court has clearly stated that the witnesses should be cross-examined on the day they are examined in chief. In **Rajaram Prasad Yadav vs. State of Bihar [2013 (3) Scale 316]**, the Supreme Court has stated that a petition under Section 311 Cr.P.C., should not be mechanically allowed.

6. Section 309 Cr.P.C. clearly states as follows:

Provided also that-

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

7. Thus, a reading of the above shows that an adjournment cannot be granted even if the pleader of the party is engaged in another Court. In such view of the matter, this Court is of the view that this is not a fit case to interfere in the order passed by the Court below.

8. In the result, this revision is devoid of merits and accordingly, the same is dismissed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.III,
Tirunelveli.

2. The Sub-Inspector of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Thalairuthu Police Station.



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

+1cc to Mr.D.Nallathambi, Advocate Sr.No.49472

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VB/SKN/RSK/SAR3/22.03.2018/3P/5C

Order made in
Cr1.R.C. (MD) No.97 of 2018
16.02.2018