



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2019

CORAM:

THE HONOURABLE **MR. JUSTICE. N. SESHASAYEE**

Crl.O.P.(MD)No.3269 of 2019

and

Crl.M.P.(MD)No.1841 of 2019

K.Santhanalakshmi : Petitioner/Petitioner/Complainant

/Vs./

S.Karuppasamy : Respondent/Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order passed in Cr.M.P.No.6088 of 2017 in M.C.No.24 of 2015 dated 19.09.2018 on the file of the Judicial Magistrate, Uthamapalayam.

For Petitioner : Mr.S.R.A.Ramachandran

ORDER

The present petition is filed by the petitioner / Complainant for recalling R.W.1 and R.W.2 for cross-examination.

2. Heard the learned counsel appearing for the petitioner.

3. In the cryptic order passed by the learned Magistrate, it is stated that both R.W.1 and R.W.2 were respectively examined on 25.07.2017 and 07.08.2017, that the petition under Section 311 Cr.P.C., for recalling them was filed on 06.09.2017 and the learned Magistrate considered the same as obstructing course of justice and dismissed the same. While the enthusiasm of the learned Magistrate to expedite the trial has to be appreciated, it must also be indicated that on a petition filed on 06.09.2017, the learned Magistrate has chosen to pass the order only on 19.09.2018, a few days after completion of a year since it was filed. Therefore, initial urgency shown by the trial Court appears to have been given a secondary importance as it is passed on the petition filed under Section 311 Cr.P.C.

4. This Court does find that the trial Court must be reasonable in request for recalling the witnesses under Section 311 Cr.P.C., and unless the materials on records disclose that there is a deliberate tactics evolved to defeat the course of trial and justice, a liberal view necessarily has to be taken. After all, there cannot be any policy oriented decision in



exercising a discretionary power that procedural law vests in a Court for doing substantial justice in a cause.

5. In view of the above, the order passed in Cr.M.P.No.6088 of 2017 in M.C.No.24 of 2015 dated 19.09.2018 on the file of the Judicial Magistrate, Uthamapalayam, is set aside and recalled. Accordingly, this petition is allowed. The petitioner is directed to cross examine the witnesses namely, R.W.1 and R.W.2 on the same day. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

Sub Assistant Registrar (CS)

To
The Judicial Magistrate,
Uthamapalayam.

+1 CC to M/s.S.R.A.RAMACHANDRAN, Advocate (SR-51919[F] dated 06/03/2019)

SM

Cr1.O.P. (MD) No.3269 of 2019
04.03.2019

KM/ (27.03.2019) 2P 3C