



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2019

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

Cr1.O.P.(MD)No.3703 of 2019

Vinoth Prabhakar

... Petitioner

/Vs./

State rep. by,
The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.
(Crime No.441 of 2011)

... Respondent

Prayer: Petition - filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order dated 14.02.2019 passed in Cr.M.P.No.1583 of 2019 in C.C.No.335 of 2011 on the file of the learned Judicial Magistrate No.II, Thoothukudi, Thoothukudi District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.V.Neelkandan

Additional Public Prosecutor

ORDER

The present petition has been filed to set aside the order dismissing the petitioner's prayer for recalling P.W.1 and P.W.2 made under Section 311 Cr.P.C..

2. The petitioner faces trial for the offence under Sections 294(b), 323, 506(ii) IPC in C.C.No.335 of 2011. The learned Magistrate in the impugned order has indicated that P.Ws.1 and 2 were examined some five years back from now and the present petition is filed when the case is actually posted for defence evidence.

3. The learned counsel for the petitioner has now come to blame counsel, who was earlier on record, for not cross-examining P.Ws.1 and 2, both of whom are prime witnesses in this case and all the other witnesses have been examined.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

5. This Court cannot technically blame the order of the trial Court as it has acted in terms of the Vinoth Kumar's case. However, since the petitioner is said to have participated in the trial from



P.W.3 upwards, the lenient view may be accorded to him. However, the delay caused by him or by his former counsel cannot go non-compensated as it drains the quality judicial time.

6. Accordingly, this petition is allowed on condition that the petitioner to deposit a sum of Rs.5,000/- (Rupees five thousand only) before the District Legal Services Authority, Tuticorin on or before 14.03.2019, whereupon the trial Court is directed to recall P.W.1 and P.W.2 for cross-examination and it is further directed that they shall be cross-examined on the same date. Further this Court directs the trial court that no adjournment whatsoever shall be granted to the accused on any grounds. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar(CS II)

To

1.The Judicial Magistrate No.II
Thoothukudi.

2.The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi District.

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

Copy to:
The Officer Incharge,
District Legal Services Authority,
Thoothukudi.

1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-53297[F] dated
12/03/2019)

Order made in
Cr1.O.P. (MD)No.3703 of 2019
11.03.2019