

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.03.2019****CORAM****THE HONOURABLE MR. JUSTICE M.DHANDAPANI****Crl.O.P.(MD)No.4022 of 2019
and Crl.M.P.(MD).No.2388 of 2019**

S.John @ John Xavier

.. Petitioner/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Kaliyakavilai Police Station,
(Cr.No.937 of 2010)

.. Respondent/Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order dated 15.02.2018 made in C.M.P.No.1038 of 2018 in C.C.No.233 of 2012, on the file of the learned Judicial Magistrate No.I, Kuzhithurai.

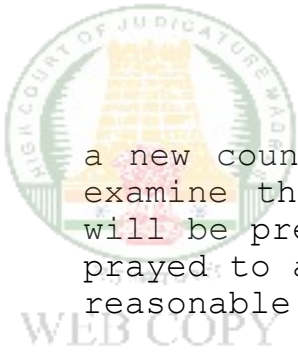
For Petitioner : Mr.C.Muthusaravanan

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor**ORDER**

This petition has been filed to set aside the order dated 15.02.2018 made in C.M.P.No.1038 of 2018 in C.C.No.233 of 2012, on the file of the learned Judicial Magistrate No.I, Kuzhithurai.

2.The facts of the case is that the petitioner was implicated in the Crime Number 937 of 2010 on the file of respondent police for the offences punishable under sections 324, 506(ii) of IPC and 3(1) of P.P.D.L. Act @ 447, 427, 324, 506(ii) of IPC. After completion of investigation charge sheet has been filed before the learned Judicial Magistrate No.I, Kuzhithurai and the same was taken on file as C.C.No.233 of 2012. The prosecution witnesses were examined in chief as early as in the year 2014. However, after four years the petitioner filed a petition under Section 311 Cr.P.C for cross examination of P.W.1 and P.W.2. However, the said petition was dismissed. Hence, this criminal original petition has been filed by the petitioner.

3.The learned counsel for the petitioner would submit that the earlier counsel engaged by the petitioner has not properly communicated with the petitioner. Hence, the petitioner has engaged



a new counsel with request to recall the P.W.1 and P.W.2 and cross examine them. If the petitioner was not given an opportunity, he will be prejudiced and the case will be decided against him. Hence, prayed to allow this petition and the petitioner is ready to deposit reasonable amount as per the direction of this Court.

3.The learned Additional Public Prosecutor appearing for the state has no objection to entertain this petition on payment of cost.

4.Hence, considering the principles of natural justice, this Court inclined to give an opportunity to the petitioner to cross examine the P.W.1 and P.W.2 on condition of payment of Rs.5,000/- to the Dog Squad, Kaniyakumari District.

4.Accordingly, the order passed by the learned Judicial Magistrate No.I, Kuzhithurai, in C.M.P.No.1038 of 2018 in C.C.No.233 of 2012 on his file dated 15.02.2018, is set aside and the learned Judicial Magistrate is directed to post the matter on 27.03.2019 for cross examination of P.W.1 and P.W.2. The petitioner shall cross examine the P.W.1 and P.W.2 on the same day itself. The petitioner shall pay a sum of Rs.5,000/- by cash to the Superintendent of Police, Kanyakumari District for the welfare of Dog Squad, Kanyakumari District.

5.With the above direction, this criminal original petition is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

TM

To

1.The Judicial Magistrate No.I, Kuzhithurai.

2.The Superintendent of Police, (for the welfare of Dog Squad), Kanyakumari District.

1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-54621[F] dated 18/03/2019)

Cr1.O.P. (MD)No.4022 of 2019
18.03.2019

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