



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE. N.SESHASAYEE

CrI.O.P.[MD].No.4724 of 2019

Singa Durai : Petitioner / Petitioner / Accused

/Vs./

The State represented by
The Inspector of Police,
Vasudevanallur,
Tirunelveli District.

: Respondent / Respondent /
Complainant

[Crime No.220 of 2016]

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records relating to the impugned order dated 12.02.2019 made in Cr.M.P.No.341 of 2019 in C.C.No.83 of 2017 on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri and to set aside the same as illegal.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

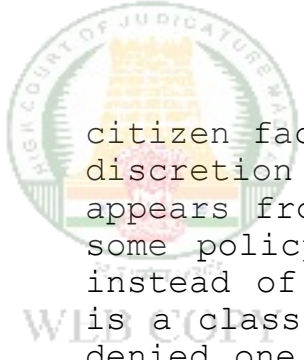
ORDER

This petition has been filed to quash the impugned order dated 12.02.2019 made in Cr.M.P.No.341 of 2019 in C.C.No.83 of 2017 on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri.

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

3. The trial of the case for the offence under Section 304 A IPC has commenced on 08.01.2019 before the learned Magistrate. On that day, the learned counsel appearing for the petitioner has sought a day's time as he could not get necessary instructions from the accused. The trial Court appears to be in a fastidious and disciplinarian mode, and has denied any adjournment. A petition is filed almost immediately to recall P.W.1 for cross-examination and has been dismissed.

4. The trial Courts are required to be instructed that in our society giving considerable economic disadvantage which many a



citizen faces, some degree of flexibility is necessary in exercising discretion granted to them in the matter of recalling witness. It appears from experience that some of the Magistrate appears to take some policy decision on how to exercise their judicial discretion instead of exercising it on the basis of facts visiting them. Here is a classic example of the said syndrome where the Magistrate has denied one day's time for cross-examination of P.W.1, as if he is a School Principal disciplining the child. But he has not even been able to achieve the purpose since the petitioner / accused has only come to this Court which has only augmented the delay due to the pendency of this litigation, and has added agony to the litigants that goes with that. The bottom line in exercising judicial discretion must be dictated by the cause of substantial justice involved in this case and should not be determined by any inflexible policy decision of the trial judge. Unless the accused is proved to be recalcitrant, as to delay and defeat the course of trial, it is imperative that judicial sensitivity should match the cause of substantial justice rather than its opposite.

5. This Court now allows this petition to recall P.W.1 who the petitioner shall now have an opportunity to cross-examine. The order dated 12.02.2019 made in Cr.M.P.No.341 of 2019 in C.C.No.83 of 2017 on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri, is set aside. It is again reiterated that the trial Court should take pragmatic view rather than pedantic of the entire aspect of the trial of cases.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)

To

- 1.The Additional District Munsif cum Judicial Magistrate, Sivagiri.
- 2.The Inspector of Police,
Vasudevanallur, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-57706[F] dated 29/03/2019)

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29.03.2019

CS: 29/05/2019/2P/5C