



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P(MD)No.5616 of 2019

Vijay

... Petitioner/Petitioner/
1st Accused

Vs.

The State rep. by its
Sub Inspector of Police,
Devakottai Town Police Station,
Devakottai,
Sivagangai District.
(Cr.No.763 of 2014)

... Respondent/Respondent/
Complainant

Prayer : This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to impugned order passed by learned Judicial Magistrate, Devakottai made in Cr.M.P.No.4270 of 2018 in C.C.No.16 of 2015 and set aside the same by allowing the present Criminal Original Petition.

For Petitioner : Mr.A.Saravanan

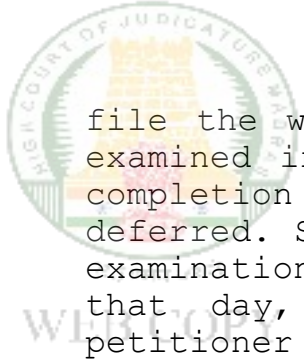
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Cr1. Side)

O R D E R

This Criminal Original Petition has been filed to call for the entire records relating to impugned order passed by learned Judicial Magistrate, Devakottai made in Cr.M.P.No.4270 of 2018 in C.C.No.16 of 2015 and set aside the same by allowing the present Criminal Original Petition.

2.Heard Mr.A.Saravanan, learned counsel appearing for the petitioner and Mr.A.P.G.Ohm Chairma Prabhu, Government Advocate (Cr1. Side) appearing for the State.

3.The petitioner herein is the accused in C.C.No.16 of 2015 for the offence under Section 379 I.P.C. After the case has taken on



file the witnesses P.W.1 and P.W.2, the Law Enforcing Agency were examined in Chief on 12.01.2018 and P.W.3 on 19.02.2018 and after completion of the Chief Examination, initially cross examination was deferred. Subsequently, the matter was posted for cross-examination, examination of the above said witness on 19.02.2018. However, on that day, the Lawyer boycotted from the Court, thereby, the petitioner was not able to examine the above said witnesses and the reason for not examination of the witnesses is neither willful nor wanton but for the above *bonafide* reasons and due to non-examination, the main case cannot be finalised.

4.To disprove the case of prosecution, it is necessary to cross examine the above said witness and a petition under Section 311 Cr.P.C. was filed to recall the witnesses for the purpose of cross examination. However, on 02.03.2019 the said petition was dismissed, though the petitioner filed Adjournment Application, under Section 309 Cr.P.C.. Against which, the present Criminal Original Petition has been filed.

5.The learned Government Advocate (criminal side) appearing for the State would submit that to give one more opportunity to the petitioner, they are ready to produce the witnesses on 13.05.2019 and on the same day, the petitioner has to cross examine all the three witnesses, on reasonable costs.

6.Considering the facts and circumstances of the case, I am inclined to allow the petition to recall the witnesses-P.Ws.1 to 3, for cross examination.

7.Accordingly, this Criminal Original Petition is allowed on payment of Rs.6,000/- each (Totally a sum of Rs.18,000/-) as costs to be paid by the petitioner to the witnesses/P.W.1 to 3. The order dated 02.03.2019, passed in Cr.M.P.No.4270 of 2018 in C.C.No.16 of 2015, by the learned Judicial Magistrate, Devakottai, is set aside. The Trial Court is directed to recall the witnesses P.Ws.1 to 3, on 13.05.2019 for their cross-examination. The respondent police is directed to produce the witnesses P.Ws.1 to 3 on 13.05.2019. On their appearance before the Court, the petitioner shall pay a sum of Rs.6,000/- each (Totally a sum of Rs.18,000/-) directly to P.Ws.1 to 3, as witness costs. The Trial Court after ensuring such payment, shall permit the petitioner to cross-examine P.Ws.1 to 3 and the petitioner is also directed to complete his cross-examination on the same day (on 13.05.2019).

Sd/-

Assistant Registrar (CS III)

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To

1.The Judicial Magistrate,
Devakottai.

2.The Sub Inspector of Police,
Devakottai Town Police Station,
Devakottai,
Sivagangai District.

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

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

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