



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Crl.O.P.[MD]No.6020 of 2019

and

Crl.M.P.(MD)No.3876 of 2019

Balamurugan : Petitioner/Sole Accused
Vs.

State rep by
The Sub Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District. : Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the order dated 10.01.2019 passed by the Judicial Magistrate No.III, Nagercoil in Crl.M.P.No.3752 of 2018 in C.C.No.216 of 2015 and set aside the same.

For Petitioner : Mr.P.T.Ramesh Raja
For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

ORDER

The Criminal Original Petition has been filed to recall P.Ws.1 and 2 in Crime No.347 of 2014, in which the petitioner faces trial for the offences under Section 341, 294 (b), 323 and 506 (I) IPC. Both P.Ws.1 and 2 were examined in chief sometime in the year 2016 and after two years the petitioner has preferred a petition in Crl.M.P.(MD)No.3752 of 2018 for recalling P.Ws.1 and 2 for cross examination. The trial Court after relying on the judgement of the Hon'ble Supreme Court in the case of **Vinoth Kumar Vs. State of Punjab** [CDJ Law Journal 2015 S.C. 115] dismissed the petition.

2. The learned counsel for the petitioner made a fervent plea that the petitioner's right to liberty is in peril if these witnesses were not cross examined.

3. This was opposed strongly by the learned Additional Public Prosecutor.

4.1. If the petitioner is justly anxious about defending the charges to secure his right to liberty, then he had his opportunity to do the same by cross examining the witnesses at the appropriate time. He cannot fix his time schedule for conduct of the trial and for cross examining the witnesses. Now he wants to bend procedure to suit his convenience, which speaks volume about the conduct of the petitioner.



4.2. Still a case in aid substantial justice lingers. This dilatory tactics of the petitioner however cannot go without penalty.

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5. Accordingly, this Criminal Original Petition is allowed upon the petitioner paying a cost of Rs.10,000/- before the District Legal Services Authority within a period of two weeks from the date of receipt of a copy of this order, upon which the Court shall summon both P.Ws.1 and 2 and both shall be cross examined on the same date. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sub Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.

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

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-62767[F] dated 26/04/2019)

Cr1.O.P. [MD] No.6020 of 2019
25.04.2019

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