



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) No. 507 of 2019

and Crl.M.P. (MD) No. 251 of 2019

1. T. Vembaiyan

2. Thiagarajan

...Petitioners/Petitioners/Accused-1 & 2

Vs.

Sammantham (died)

Grahalakshmi

...Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set-aside the order dated 04/12/2018 passed in Cr.M.P.No.7130/2017 in C.C.No.384/2011 on the file of the Judicial Magistrate No.II, Thanjavur.

For Petitioner : Mr. G. Karnan

For Respondent : No Appearance

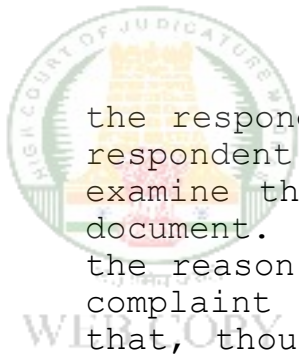
ORDER

This petition has been filed to set-aside the order dated 04/12/2018 passed in Cr.M.P.No.7130/2017 in C.C.No.384/2011 on the file of the Judicial Magistrate No.II, Thanjavur.

2. Though notice was served to the respondent there is no representation on behalf of the respondent.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused. The complaint lodged by the respondent has been taken cognizance for the offences under Section 420 r/w 120(b) of I.P.C. Originally, the complainant was examined as P.W.1 and thereafter he died. Subsequently, the respondent herein has been impleaded as party. Thereafter, the petitioner has filed a petition in Crl.M.P. No. 7130 of 2017 before the learned Judicial Magistrate No.II, Thanjavur under Section 311 of Cr.P.C. to examine the respondent and other two persons as witnesses and the learned Magistrate dismissed the aforesaid petition for the reason that the persons who cited as complainant/witnesses cannot be examined on the side of the accused and also stated that the present case was posted for argument even in the year 2012. Thereafter, the present petition has been filed by the petitioner in the year 2017, therefore dismissed.

4. It is seen from the records that the petitioner is a accused. The complaint was originally filed in the year 2007 and after examination of the defacto complainant he died. Thereafter,



the respondent was impleaded as complainant. At this juncture, the respondent filed a petition under Section 311 of Cr.P.C. to cross examine the respondent and other witnesses who are parties to the document. The learned Magistrate dismissed the said petition for the reason that the persons who have been cited as witnesses in the complaint cannot be examined on behalf of the accused. It is seen that, though the witnesses have been mentioned in the complaint as witnesses they were not examined.

5. In view of the above discussions, the Criminal Original Petition is allowed and the order dated 04.12.2018 in Crl.M.P. No.7130 of 2017 in C.C.No. 384 of 2011 passed by the learned Judicial Magistrate No.II, Thanjavur is set aside and. The trial Court is directed to fix particular date for examination of the witnesses as requested by the petitioner. If the petitioner fails to examine the witnesses on the date fixed by the trial Court, the trial Court can proceed the trial in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

ksa

To

The Judicial Magistrate No.II,
Thanjavur

+1 CC to M/s.G.KARANAN, Advocate (SR-87171[F] dated 17/09/2019)

Crl.O.P. (MD) No. 507 of 2019

16.09.2019

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