



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

CrI.O.P.(MD)No.9967 of 2019
and
CrI.M.P.(MD)No.6293 of 2019

G.Thiruppathi ... Petitioner/Accused(Sole)

Vs.

The State represented by
The Sub-Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.
(Crime No.81 of 2015)

...Respondent/Complainant

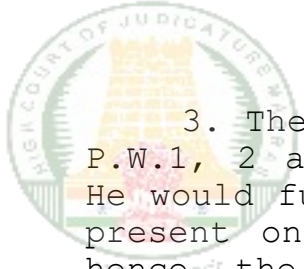
PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Paramakudi, Ramanathapuram District in Cr.M.P.No.2372 of 2019 in C.C.No.61 of 2017 dated 07.06.2019 and set aside the same and consequently direct the above said learned Judicial Magistrate to recall the witnesses namely P.W.1, P.W.2, P.W.10 and P.W.11.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (CrI.Side)

ORDER

Against the order of dismissal passed in Cr.M.P.No.2372 of 2019 in C.C.No.61 of 2017 dated 07.06.2019, this petition has been filed.

2. The case of the petitioner is that the petitioner is the sole accused in Crime No.81 of 2015 registered for the offence under Section 304 (A) IPC now pending in C.C.No.61 of 2017 on the file of the learned Judicial Magistrate, Paramakudi. According to the petitioner, P.W.1 and P.W.2 in this case were examined on 21.09.2017 and after one year P.W.11 was also examined. Since the petitioner's counsel was held up in the High Court, the witnesses were not cross examined on the said date. Hence, he filed a petition to recall the witnesses under Section 311 Cr.P.C.. The learned trial Judge has dismissed the petition. Aggrieved over the same, the petitioner has filed the present petition.



3. The learned counsel for the petitioner submitted that except P.W.1, 2 and 11 other witnesses in this case have turned hostile. He would further submit that the counsel for the petitioner was not present on the date of chief examination of P.W.1, 2 and 11 and hence, the said witnesses were not cross examined on the same date and there is no wilful *mala fide* intention on the part of the petitioner to delay the trial. He would also submit that in order to prove his case, an opportunity may be given to the petitioner for cross examining those witnesses.

4. Per contra the learned Government Advocate (Crl.Side) appearing for the respondent, on instructions, would submit that though P.W.1 and 2 are examined on 21.09.2017 itself, the petitioner kept quiet for more than 2 years. Thereafter, P.W.11 was also examined on 08.05.2019. Now after completion of prosecution side evidence and questioning under Section 313 Cr.P.C., the petitioner has filed the petition.

5. I have heard the learned counsel appearing on either side and perused the records.

6. On perusal of records, it could be seen that P.Ws.1 and 2 were examined on 21.09.2017, thereafter P.W.11 was also examined on 08.05.2019. Now after closing of the prosecution evidence, the present application has been filed. Even though there is a delay of two years in filing petition to recall the witnesses, considering the reason stated in the petition that, it is only because of the fault of the learned counsel, the witnesses were not examined. The trial Court has dismissed the petition stating that after completion of prosecution side evidence the witnesses cannot be recalled.

7. However, considering the fact that the petitioner is facing serious offence under Section 304-A IPC and only in order to give an opportunity to the petitioner to prove his case in the interest of justice, I am inclined to set aside the order of the trial Court. Accordingly, the order dated 07.06.2019 passed in Cr.M.P.No.2372 of 2019 is set aside, and the learned Judicial Magistrate is directed to recall P.Ws.1, 2 and 11 on 30.07.2019, and the petitioner is directed to cross examine them on the same date. If the petitioner is failed to cross examine the witnesses on that date it is open to the trial Court to proceed with the matter.

8. This Criminal Original Petition is allowed in the aforesaid terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

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To

1.The Judicial Magistrate, Paramakudi,
Ramanathapuram.

WEB COPY

2.The Sub-Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.

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

+1 cc Mr.S.M.ANANTHA MURUGAN, ,Advocate, SR.No. 75493

Crl.O.P. (MD)No.9967 of 2019
16.07.2019

TA
KK/SAR/25.07.2019/3P-5C