



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P. (MD) .No.11287 of 2019

and

Crl.M.P. (MD) .No.7072 of 2019

Kuttai Vinoth @ Vinoth Kumar

... Petitioner

Vs.

State represented by
the Inspector of Police,
Kallaperambur Police Station,
Thanjavur,
Thanjavur District.
(Crime No.100 of 2015)

... Respondent

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code to call for the records and set aside the order dated 08.08.2017 passed in Crl.M.P.No.639 of 2017 in S.C.No.15 of 2017 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

O R D E R

Challenging the order passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District, dismissing the application filed under Section 311 of Cr.P.C., the present petition has been filed.

2. The petitioner is the sole accused and he has been charged with for the offences under Sections 342, 352, 506(ii), 376 and 377 of I.P.C. and he was arrested and remanded to judicial custody. In the mean time, the trial has commenced and all the prosecution side witnesses were examined by the trial Court. Since the petitioner is in judicial custody, he was not able to engage a lawyer to conduct the case. In the above circumstances, he was not able to cross-examine the prosecution witnesses. But the



learned Sessions Judge after examining the prosecution side witnesses, post the matter for argument. At this stage, now the petitioner has engaged a lawyer and filed a petition to recall the prosecution witnesses, the learned Sessions Judge dismissed the application on the ground that the application has been filed belatedly after two months.

3. The learned counsel for the petitioner would contend that since the petitioner was in judicial custody, he was not able to engage the lawyer to defend his case. Hence, he has filed an application under Section 311 of Cr.P.C., to recall the prosecution witnesses. But the learned Sessions Judge without considering the same, dismissed the application. Challenging the same, the present petition has been filed.

4. The learned Government Advocate (Crl.side) would submit that even though the petitioner has not engaged a lawyer, the prosecution witnesses have been examined on various dates, but the petitioner has deliberately kept quiet without cross-examining the witnesses. Now, belatedly after two months, he has filed an application under Section 311 of Cr.P.C., to recall the prosecution witnesses and the learned Sessions Judge, after considering the entire materials, rightly dismissed the application.

5. I have considered the rival submissions and perused the materials available on record.

6. On perusal of the records, it is seen that the prosecution witnesses have been examined on various dates, but the petitioner has not cross-examined any of the witnesses and now after examining the prosecution side witnesses and after questioning the matter is posted for argument. At this stage, the present application has been filed to recall the prosecution witnesses. The learned Sessions Judge has also considered the entire materials and dismissed the application. However, considering the fact that the offences are very serious in nature and a fair trial is a fundamental right guaranteed under Article 21 of the Constitution of India, and also considering the fact that since the accused is still in judicial custody, he was not able to engage the lawyer. In the said circumstances, in order to give one more chance to the petitioner, this Court is inclined to set aside the order passed by the learned Sessions Judge. Accordingly, the order passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District, dated 08.08.2017 in Crl.M.P.No.639 of 2017 in S.C.No.15 of 2017 is set aside and the learned Sessions Judge is directed to recall all the



prosecution witnesses on 16.09.2019, and the petitioner is directed to cross-examine all the prosecution witnesses for a week and thereafter proceed with the matter. Accordingly, this criminal original petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The learned Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Thanjavur,
Thanjavur District.
- 2.The Superintendent, Central Prison, Trichy
- 3.The Inspector of Police,
Kallaperambur Police Station,
Thanjavur,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.Á.Thiruvadi Kumar , Advocate SR.No.83371

akv

Order made in
CRL.O.P. (MD) .No.11287 of 2019

Dated:
26.08.2019

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