



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.12.2019
CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. (MD) No.18032 of 2019
and
Crl.M.P (MD) No.10603 of 2019

N.Kalyanasundaram ... Petitioner/Petitioner/Accused
Vs.
G.Sivasankaran ... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Cr.M.P.No.9633 of 2019 dated 02.08.2019 in C.C.No.233 of 2012 on the file of the learned Judicial Magistrate No.I, Tirunelveli and allow this petition.

For Petitioner : Mr.R.Venkateswaran

ORDER

This petition has been filed seeking direction to set aside the order passed in Cr.M.P.No.9633 of 2019 dated 02.08.2019 in C.C.No.233 of 2012 on the file of the learned Judicial Magistrate No.I, Tirunelveli and allow this petition.

2. The petitioner/ accused has filed petition in Cr.M.P.No.9633 of 2019 to recall the complainant for cross examination. The trial court found that the case is of the year 2012 and Non Bailable Warrant was issued against the petitioner on 13.02.2014 and that it was recalled and thereafter the petitioner filed petition to recall PW.1 on 07.03.2014 and it was posted for cross examination of PW.1/complainant on 21.03.2014, 03.04.2014 and 10.04.2014, but the petitioner did not cross examine and thereafter he had absconded for five years. Hence the trial court dismissed the petition stating that though several opportunities were given to the petitioner he has failed to avail the same.

3 The learned counsel for the petitioner would submit that the petitioner was involved in another case and he had absconded, hence he was unable to cross examine the witnesses.

4. It is seen from the records that the petition seeking for recalling PW.1 has been earlier allowed on 07.03.2014 and despite the appearance of the witness on 21.03.2014, 03.04.2014 and 10.04.2014 the petitioner has not cross examined the witnesses. The trial court finding that the petitioner had failed to avail the



earlier opportunity and that the petition had been filed after five years has rightly dismissed the petition. I do not find any infirmity in the order.

5. Hence, this Court is not inclined to set aside the order passed by the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P.No.9633 of 2019 dated 02.08.2019

6. In the result, this petition is dismissed. Consequently connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

aav

To

The Judicial Magistrate No.I, Tirunelveli

+1 CC to Mr.R.VENKATESHWARAN, Advocate (SR-103469[F] dated 04/12/2019)

Crl.O.P.(MD) No.18032 of 2019

and

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MK (31.12.2019) 2P 3C