



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.O.P. (MD)No.3828 of 2020

Suresh

... Petitioner/
Accused No.1

Vs

1. State through
The Inspector of Police,
Pudukkottai police station,
Thoothukudi District,
In Crime No.221 of 2019.

... Respondent/ Complainant

2. Parthiban

... Respondent/
Defacto complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to direct the II-Additional Sessions Court, Thoothukudi, to dispense with the petitioner's personal appearance in S.C.No.1 of 2020 on the file of the learned II Additional Sessions Court, Thoothukudi, throughout the case as far as the petitioner is concerned.

For Petitioner : Mr.B.N.Raja Mohamed

For R1 : Mr.A.Robinson
Government Advocate (Criminal side)

O R D E R

Heard the learned counsel on either side.

2. The petitioner is figuring as the first accused in S.C.No.1 of 2020 on the file of the II Additional Sessions Court, Thoothukudi. He wants his personal appearance before the Court below to be dispensed with. He has assigned certain reasons in the affidavit filed in support of this Criminal Original Petition. He also would point out that Section 205 of Cr.P.C., can be invoked only if the case is pending before the Magistrate Court and is a summons case. Likewise, Section 317 of Cr.P.C., is



also not of much avail because it pertains to the exemption of the accused on a particular date. That is why, the petitioner has approached this Court for relief.

3. The learned counsel for the petitioner brought to my notice that the decision of the Hon'ble Supreme Court reported in **2020 Cr1.L.J.322** in the case of **Shivkumar Jatia Vs State of NCT of Delhi**, in which it has been held that the High Court has the power to exempt the personal appearance of the accused in exercise of its inherent powers conferred under Section 482 of Cr.P.C.

4. The petitioner undertakes to file an affidavit before the Court below, in which he will undertake not to dispute the identity of the witness. In other words, the said affidavit to be filed by the petitioner will have to comply with the mandate set out in Section 317 of Cr.P.C. The petitioner agrees to appear as and when required by the Court below. In other words, the petitioner will have to necessarily appear at the time of questioning, to answer the charges, for examination under Section 313 of Cr.P.C., and again at the time of pronouncement of judgment. If this undertaking given before this Court is breached, the petitioner will have to face the necessary consequences. On all other occasions, the appearance of the petitioner will stand dispensed with. Ofcourse, the petitioner will have to be represented by his counsel on all the occasions when he is not physically presented. The petitioner agrees to surrender his passport also. The petitioner also agrees to be present in person when L.W.2 to L.W.4 and L.W.17 and L.W.18 are examined. Ofcourse, when the Investigation Officer is examined, the petitioner has to be present. On all other occasions his appearance is dispensed with.

5. Accordingly, this Criminal Original Petition stands allowed.

sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar()

TO

1. THE II ADDITIONAL SESSIONS COURT,
THOOTHUKUDI.



2. THE INSPECTOR OF POLICE,
PUDUKKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.

+1 CC to M/s.B.N.RAJAMOHAMED, Advocate (SR-10470[F] dated
06/03/2020)

Order made in
Cr1.O.P. (MD) No. 3828 of 2020
04.03.2020

SRS/ 18.03.2020/ 3P/4C