



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.(MD) No.3089 of 2020

and

Crl.M.P(MD) No.1631 of 2020

John William

...Petitioner/Accused

Vs.

State Rep by

The Inspector of Police

AppanThirupathi Police Station

Madurai

(Cr No No.47 of 2017)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Crl.M.P.No.1522 of 2019 and set aside the order of dismissal dated 09.01.2020.

For Petitioner : Mr.R.Sivakumar

For Respondent : Mr.S.Chandrasekar

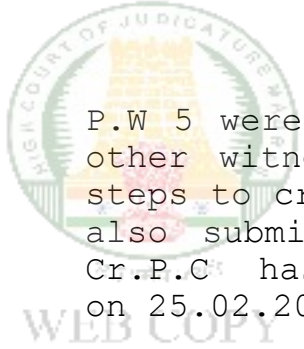
Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to set aside the order passed in Crl.M.P.No.1522 of 2019 dated 09.01.2020 in S.C.No.503 of 2018 on the file of the learned Chief Judicial Magistrate, Madurai and allow this petition.

2. The learned counsel for the petitioner would submit that the petitioner is an accused facing trial in S.C.No.503 of 2018 pending on the file of the learned Chief Judicial Magistrate, Madurai for the offence under Sections 294(b) and 307 of IPC. He would submit that due to his illness he was unable to instruct his counsel properly and thereby he was unable to cross examine PW.1 to P.W.11. Hence he had filed an petition in Crl.M.P.No.1522 of 2019 to recall PW.1 to P.W.11. The trial court by an order dated 09.01.2020 has dismissed the same. He would further submit that though there had been serious lapses on the part of the petitioner/accused he would submit that non cross examination of the will result in the case of no defence causing grave difficulty to the petitioner/accused. He would submit that though the petition for recall had been filed in respect of PW.1 to P.W.11, the petitioner is now restricting his claim in respect of PW.1, P.W.2, P.W.9 and P.W.11. He would also submit that permission may be granted to recall and cross examine witnesses on imposition of costs and terms.

3. The learned Additional Public Prosecutor would submit that the attitude of the petitioner is very lethargic . He would also submit that P.W1 and P.W 2 were examined on 04.04.2019 and P.W4 and



P.W 5 were examined on 10.10.2019 and subsequently on several days other witnesses have been examined. The petitioner did not take steps to cross examine them or recall them at the earliest. He would also submit that by this time questioning under Section 313 of Cr.P.C has got over and now the case stands posted for arguments on 25.02.2020.

4. This Court has gone through the order passed by the trial Court. The trial Court taking into consideration the mandate of the judgment rendered by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]** has rightly dismissed the petition.

5. This Court does not find any infirmity in the order passed by the trial Court. However, since the petitioner is facing charge under Section 307 of IPC this Court deems it fit that one more opportunity may be given to the petitioner to cross examine the witness in the interest of justice for fair trial.

6. This Court enquired the learned Additional Public Prosecutor whether the respondent would be able to produce the relevant witness. He would on instructions from the respondent police submit that the respondent will be able to produce P.W.1, PW.2 and P.W. 11 before the trial Court on the next hearing date or the date fixed by the trial Court, however subject to the availability of the P.W.9/Doctor, they will able to produce PW.9 also on the next hearing date or any other date fixed by the trial Court.

7. In view of the above, the impugned order is set aside partly and this petition is allowed on the following terms and conditions. The petitioner shall file process application along with cost of Rs.14,000/- before the trial Court on or before 24.02.2020 and on such deposit being made the trial Court shall disburse Rs.5000/- to the District Legal Services Authority and Rs. 2000/- each to P.W.1 and P.W.2 and Rs.5000/- to P.W.9/Doctor. The petitioner shall also file an affidavit of undertaking that he will cross the witnesses PW.1, P.W.2, P.W.9 and P.W.11 on the same day of their appearance before the trial Court. In the event of petitioner failing to cross examine the witnesses on the day of appearance before the trial Court, the petitioner will loose his chance to cross examine them again. Consequently connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar

/True copy/

/02/2020
Sub Assistant Registrar



To

1.The Chief Judicial Magistrate, Madurai

2.The Inspector of Police,
Appanthirupathi Police Station,
Madurai.

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

Cr1.O.P.(MD) No.3089 of 2020
and
Cr1.M.P(MD) No.1631 of 2020
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