



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN
CRL OP(MD)No.8464 of 2020

and

CrI.M.P. (MD)No.4006 of 2020

WEB COPY

Saravanakumar, S/o.Shanmugam

... Petitioner/Petitioner/
Accused

Vs.

The State Rep. by
The Inspector of Police,
Periyakulam Police Station,
Theni.

(Crime No.152 of 2016)

... Respondent/Respondent/
Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the impugned order in Cr.M.P.No.2297 of 2019 in C.C.No.6 of 2017, on the file of the learned Judicial Magistrate, Periyakulam, dated 14.06.2019 and set aside the same as illegal.

For Petitioner

: Mr.R.Shankar Ganesh

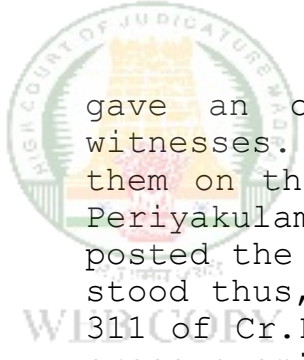
For Respondent

: Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking the relief, to set aside the impugned order dated 14.06.2019, made in Cr.M.P.No.2297 of 2019 in C.C.No.6 of 2017, on the file of the Judicial Magistrate Court, Periyakulam.

2.The learned counsel appearing for the petitioner would submit that the petitioner herein is the accused in C.C.No.6 of 2017, on the file of the Judicial Magistrate Court, Periyakulam. In earlier, for the alleged accident, which had happened in the year 2016, the respondent police registered a case against the petitioner in Crime No.152 of 2016, for the offence under Sections 279 and 337 IPC and thereafter, it was altered to under Section 304-A IPC. After completing the investigation, the respondent herein filed a final report and the learned Judicial Magistrate, Periyakulam, has taken cognizance of the offence in C.C.No.6 of 2017. Thereafter, the said case was adjourned time and again for the purpose of completing the trial. In the meanwhile, on 14.09.2018, the witnesses, who are arrayed as P.W.1 to P.W.5, were examined in-chief. After recording the chief examination, the learned Judicial Magistrate, Periyakulam,



gave an opportunity to the petitioner for cross-examining the witnesses. However, the petitioner herein has not cross-examined them on the same day. Therefore, the learned Judicial Magistrate, Periyakulam, closed the cross-examination of P.W.1 to P.W.5 and posted the case for examination of other witnesses. While the thing stood thus, the petitioner herein filed an application under Section 311 of Cr.P.C. seeking to recall P.W.1 to P.W.5, for the purpose of cross-examination. According to the petitioner, after affording an opportunity to the respondent police, the learned Judicial Magistrate, Periyakulam, on 14.06.2019 dismissed the said petition, without any clear findings and therefore, in order to render real justice, it is necessary to complete the cross-examination of P.W.1 to P.W.5. Hence, the petitioner is before this Court with the present petition for the relief stated supra.

3. Heard the learned Additional Public Prosecutor appearing for the respondent.

4. Upon considering the arguments advanced by the learned counsel on either side, it is not in dispute that the Calendar Case pertains to this petition, is taken on file in the year 2017. Subsequently, in the year 2018, five witnesses have been examined in-chief and now, the said case is still pending on the file of the Judicial Magistrate Court, Periyakulam.

5. Now, on going through the impugned order passed by the learned Judicial Magistrate, Periyakulam, it appears that the learned Judicial Magistrate has borne in mind the principles laid down by our Hon'ble Apex Court as well as by this Court with regard to completion of cross-examination and rejected the request of the petitioner.

6. Here, in this case, the petitioner was tried before the learned Judicial Magistrate, Periyakulam, for the offence punishable under Sections 279 and 337 IPC @ 304-A IPC. Though the said penal provisions are not having any compulsory punishment, now, by following the instructions given by our Hon'ble Apex Court and by the various High Courts, all the Courts are treated the said offences as serious one. Therefore, I am of the view that before completing the trial Court proceedings, the accused himself must be given full opportunity to prove his innocence. In this regard, it is necessary and useful to read Section 311 Cr.P.C., which reads as follows:-

''311. Power to summon material witness, or examine person present.-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or

<https://hcservices.ecourts.gov.in/hcservices>

to it to be essential to the just decision of the case.''

7. According to the above said Section, any Court may, at any stage of any inquiry, trial or other proceeding under the Code of Criminal Procedure, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Accordingly, the Court can summon the witness under Section 311 Cr.P.C. at any stage of the trial and summoning of the witnesses under Section 311 Cr.P.C. at belated stage would cause great prejudice to the accused and the same should not be allowed. Here, it is a case, in which the witnesses were examined after one year from the date on which, the case was taken on file. Since the case is pending from the year 2017, it cannot be said that the petition mentioned case is pending on the file of the learned Judicial Magistrate, Periyakulam, with long delay. If there is any negligence, laches or mistake by not examining the material witnesses, the Court's function to render just decision by examining such witnesses at any stage is not, in any way, impaired. The Criminal Court is not just an umpire who deals with only the materials brought by the parties before it. The Court has to play an active role in the administration of criminal justice. Though it is not the normal duty of the Court to collect evidence, in cases where justice requires, the Court has ample power to further enquire into the matter in order to ascertain the truth. Here, in this case, if the order passed by the learned Judicial Magistrate, Periyakulam, is confirmed, the petitioner would be prejudiced and the effort taken by him to prove his innocence ends in vain.

8. In view of the above, I am of the considered opinion that the impugned order passed by the learned Judicial Magistrate, Periyakulam, may be set aside on terms. Therefore, the order dated 14.06.2019, passed in Cr.M.P.No.2297 of 2019 by the learned Judicial Magistrate, Periyakulam, is set aside on the condition that the petitioner shall deposit a sum of Rs.5,000/- [Rupees Five Thousand only] to the Chief Justice Relief Fund, High Court of Madras and shall produce the said receipt before the Court below.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

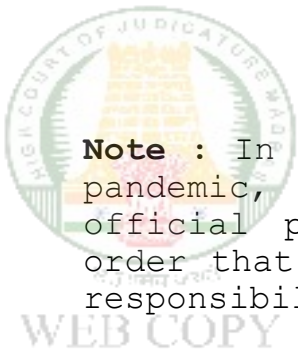
Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate,
Periyakulam.
- 2.The Inspector of Police,
Periyakulam Police Station,
Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:- The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

CRL OP (MD)No.8464 of 2020
17.08.2020

AP(25/08/2020) 4P 5C