



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

WEB COPY

Crl.O.P.(MD).No.19492 of 2019
and Crl.M.P. (MD) No. 11433 of 2019

Shankar @ Vettu Shankar ...Petitioner/Petitioner/Accused No.1

Vs.

The State rep. by
The Sub-Inspector of Police,
Lalapettai Police Station,
Karur District.

(in Crime No. 311 of 2017) ... Respondent/Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order passed in CMP No. 197 of 2019 in SC No.26 of 2018, dated 26.11.2019 on the file of the learned Assistant Sessions Judge, Kulithalai and to set aside the same as illegal.

For Petitioner : Mr. M. Suresh

For Respondent : Mr.S. Chandrasekar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition is filed to set aside the order, dated 26.11.2019 in CMP No. 197 of 2019 in SC No.26 of 2018 passed by the learned Assistant Sessions Judge, Kulithalai.

2. The learned counsel for the petitioner would submit that during the occurrence the petitioner/A1 was also injured and the P.W.4 & P.W.5 are witnesses of the occurrence. Since certain documents were not available with the petitioner at the time of cross-examination of P.W.4 & P.W.5, the petitioner was unable to effectively cross examine the witnesses P.W.4 & P.W.5 and thereby the petitioner had filed a petition under Section 311 of Cr.P.C., to recall P.W.4 & P.W.5 for further cross examination. Since their evidence is essential to arrive at a decision of the case, an opportunity may be given to the petitioner to recall the witnesses P.W.4 & P.W.5 for further cross examination, otherwise, it will result in grave prejudice to the petitioner.

3.The learned Additional Public Prosecutor appearing for the respondent, would submit that the petition may be allowed on



condition of paying batta to the witnesses P.W.4 & P.W.5 for their appearance. He would further submit that P.W.4 & P.W.5 belong to the same village.

4. Taking into consideration of the case, this Court is of the opinion that one chance may be given to the petitioner to recall the witnesses P.W.4 & P.W.5 for further cross-examination subject to the following conditions.

1. The Criminal Original Petition is allowed and the order, dated 26.11.2019 in CMP No. 197 of 2019 in SC No.26 of 2018 passed by the learned Assistant Sessions Judge, Kulithalai is set aside.
2. The petitioner shall deposit a sum of Rs.3,000/- (Rupees Three Thousand Only) before the trial Court to the credit of S.C. No.26 of 2018, out of which the trial Court shall pay a sum of Rs.1000/-each to the witnesses P.W.4 & P.W.5 for their appearance and a sum of Rs.1000/-shall be paid to the Legal Services Authority attached to the concerned Court.
3. The petitioner shall file an affidavit of undertaking to the effect that the witnesses P.W.4 & P.W.5 will be cross-examined on the day of their appearance.
4. The petitioner shall also co-operate for expeditious disposal of the case in S.C. No. 26 of 2018 on the file of the learned Assistant Sessions Judge, Kulithalai.

5. With the above directions, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Assistant Sessions Judge, Kulithalai.
2. The Sub-Inspector of Police,
Lalapettai Police Station,
Karur District.

+1 CC to M/s.M.SURESH, Advocate (SR-570[F] dated 07/01/2020)

Crl.O.P. (MD) .No.19492 of 2019
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JMN(09.01.2020) 2P : 4C

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