



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.06.2021

DATE ON WHICH PRONOUNCED : 23.06.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.7799 of 2021

and

Crl.MP (MD)No.3968 of 2021

Kannan

... Petitioner/Petitioner/Accused

Vs.

1.The Inspector of Police,
Central Police Station,
Thoothukudi District.

Respondent

... 1st Respondent/1st
Complainant

2.M.Santhanam

... 2nd Respondent/2nd Respondent
Decfacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed in Crl.MP.No.5635 of 2018, dated 05.12.2018 in C.C.No.30 of 2009 on the file of the Judicial Magistrate No.II, Thoothukudi.

For Petitioner : Mr.S.M.Mohan Gandhi.

For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the order passed by the learned Judicial Magistrate No.II, Thoothukudi in Cr.MP.No.1042 of 2021 in Crl.MP.No.5635 of 2018, dated 05.12.2018.

2. The petitioner is facing trial before the Court below for the offences under Sections 294(b), 353, 323 and 506(ii) IPC. P.W.1 & 2 were examined in chief on 17.10.2012, P.W.3 was examined in chief on 23.05.2016 and P.W.5 was examined in chief on 06.08.2018. The petitioner has omitted to cross-examine the witnesses. So, re-call petition has been filed by him. Which came to be dismissed by the learned Judicial Magistrate No.II, Thoothukudi, impugned order dated 05.12.2018, observing that there was a long delay in presenting the petition. Hence, this petition.



3.The learned counsel for the petitioner would submit that only due to the default on the side of the prosecution, the case is still pending. He would further submit that one more opportunity may be given to the petitioner to cross-examine P.Ws. 1to 3 & 5 and the petitioner will not drag on the proceedings any more.

4. Heard both sides.

5. The reason for the non-cross-examination of the witnesses on the date of chief examination, it appears that it is not properly explained by the petitioner. After a lapse of several years, the petition came to be filed. The reason assigned is that while seeing the chief examination, the necessity of the cross-examination of P.W.1 to 3 & 5 was understood.

6.The reason given by the petitioner for non-cross-examined the witnesses that only due to the default of the prosecution, the case is pending cannot be accepted.

7. But, however, in the facts and circumstances of the case, I am of the considered view that one more opportunity shall be given to the petitioner to cross-examine the material witnesses.

8. The purpose of cross-examination has been clearly enunciated by the Hon'ble Supreme Court in **Kartar Singh Vs State of Punjab** reported in (1994) 3 SCC 569. So, the points, which have been raised by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."



9. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in **(2009) 7 SCC 104** in the following words:-

"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

10. So, in the light of the above, I am of the considered view that one last opportunity is given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Judicial Magistrate No.II, Thoothukudi in Cr.MP.No.1042 of 2021 in Crl.MP.No.5635 of 2018, dated 05.12.2018, is quashed with the following conditions:-

(i) The petitioner must deposit Rs.1500/- (Rupees One Thousand and Five Hundred Only) as cost to the each witness before the Trial Court within 15 days from the date of resumption of normal work.

(ii) The Trial Court may fix a date for cross examination of the witnesses and shall send summons to the witnesses.

(iii) On the date fixed the petitioner must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

11. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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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 No.II,
Thoothukudi.
2. The Inspector of Police,
Central Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.7799 of 2021
and
Crl.MP (MD) No.3968 of 2021
23.06.2021

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