



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**
Crl.O.P.(MD) No.13949 of 2021
and Crl.M.P(MD)No.7257 of 2021

Visalam

... Petitioner/A2

Vs.

State through the
Inspector of Police,
CCIW, CID,
Nagercoil.

... Respondent/Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.9972 of 2019 in C.C.No.46 of 2006 dated 18.02.2021 on the file of the Judicial Magistrate No.II, Tirunelveli (CCTW-Special Court).

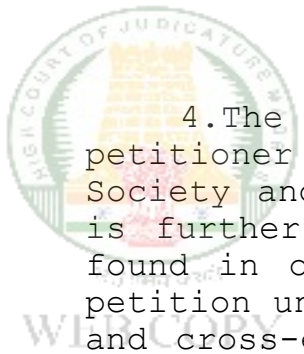
For Petitioner : Mr.J.Madhu
For Respondent : Mr.K.Sanjay Gandhi
Government Advocate (Crl.side)

ORDER

This petition is filed seeking to set aside the order passed by the learned Judicial Magistrate No.II, Tirunelveli (CCTW-Special Court) in Crl.M.P.No. 9972 of 2019 in C.C.No.46 of 2006 dated 18.02.2021.

2.The petitioner herein is the 2nd accused before the trial Court and he is facing charges under Sections 408, 467, 468, 471, 477(A) and 120(B) of IPC. P.W1 to P.W26 were examined in chief on several dates. On 13.06.2019 some vital documents were found in order to prove his innocence and hence, the petitioner filed a petition before the Judicial Magistrate No.II, Tirunelveli (CCTW-Special Court) in Crl.M.P. 9972 of 2019 in C.C.No.46 of 2006 dated 18.02.2021 to recall P.W.35.

3.The learned counsel for the petitioner would submit that the petitioner filed Cr.M.P.No.9972 of 2019 under Section 311 of Cr.P.C. to recall the prosecution witness P.W.35 but it came to be dismissed on 18.02.2021 observing that the petition is nothing but a dilatory tactics adopted by the petitioner/accused to delay the progress of the trial. Seeking to set aside the aforesaid order, this petition came to be filed.



4.The learned counsel for the petitioner would submit that the petitioner had worked as the Clerk in Arunmanallur Cooperative Society and the case was registered alleging misappropriation. It is further submitted that on 13.06.2019 some vital documents were found in order to prove his innocence and therefore, she filed a petition under Section 311 Cr.P.C and P.W.35 is the official witness and cross-examination of P.W.35 is essential to prove the case of the petitioner/A2 and therefore, he prays for setting aside the order.

5.It is seen that after a lapse of 3 years, this petition came to be filed. So, the reason assigned by this petitioner for non cross-examination of P.W.35 cannot be acceptable on the face of it. However, the petitioner is facing serious offences under Sections 408, 467, 471, 477(A) and 120(B) IPC. Unless the main witness has been cross examined, disposal on merits may not be possible. So, on the sole ground, I am inclined to set aside the order of the trial court on conditions. Accordingly, the order passed in Crl.M.P.No.9972 of 2019 in C.C.No.46 of 2006 dated 18.02.2021 on the file of the Judicial Magistrate No.II, Tirunelveli (CCTW-Special Court), is set aside. For allowing this petition, this Court issues the following conditions:-

i) Let the petitioner deposit a sum of Rs.2,000/- as cost to P.W.35 within 15 days from the date of receipt of a copy of this order before the trial Court.

ii) On deposit being made, the trial Court may recall the witness, namely, P.W.35 by fixing a particular date for cross-examination.

iii) The petitioner must cross-examine P.W.35 on the same day to be fixed by the trial Court.

iv) If any failure is noticed, then the petitioner will forfeit the right of cross-examination further.

6. In the result, this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

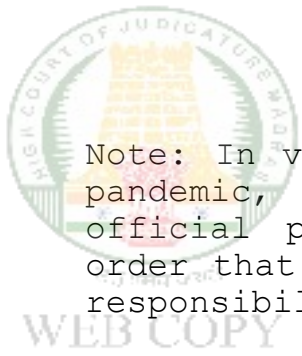
Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

CM



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 Inspector of Police,
CCIW, CID,
Nagercoil.
- 2.The Judicial Magistrate No.II,
Tirunelveli (CCTW-Special Court).
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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MGJ(01.10.2021) 3P 4C