



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.18204 of 2021

Malliga

... Petitioners

Vs.

1.The Superintendent of Police,
Pudukkottai District,
Pudukkottai.

2.The Inspector of Police,
Udayalipatti Town Police Station,
Pudukkottai District.

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the Mahila Court, Pudukkottai to postpone the case in S.C.No.15 of 2020 on the file Mahila Court, Pudukkottai until the petitioner's son namely Kama/3rd Accused is declared to be sound state of mind by the competent clinical psychologist.

For Petitioner : Mr.K.Baalasundharam
For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

O R D E R

The petitioner is the mother of the third accused in S.C.No.15 of 2020 on the file of the Mahila Court, Pudukkottai. The trial is yet to commence in the case. According to the petitioner, her son had met with a major accident and he is presently on unsound mind. She therefore wants this Court to direct the trial Court to defer the trial.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3.The petitioner's counsel draws my attention to the decision reported in (2020) 4 MLJ (Crl) 78 (Kaliyappan Vs. State Re. Inspector of Police). In more or less similar circumstances, a learned Judge of this Court issued the following directions:-

"54. In fine, this Court issues the following directions:

i. the trial Court shall conduct enquiry under the first part of Section 329(2) Cr.P.C., to find out if the accused in this case is capable of entering into his defence in praesenti;

ii, if the trial Court finds that the accused in this



case is mentally fit to face the trial, the trial shall be commenced and completed within 3 months from the date of such determination;

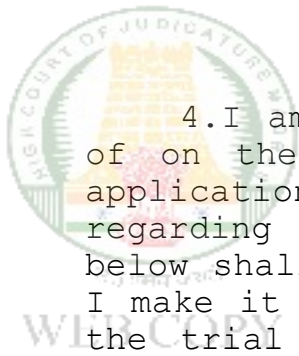
iii. in the event of the trial Court holding that the accused is not mentally fit to face the trial, the trial Court shall conduct an enquiry under the second part of Section 329(2) Cr.P.C. and afford an opportunity to the family of the accused to engage a lawyer and if the family is not in a position to engage a lawyer, the trial Court shall appoint a senior lawyer of the local bar with not less than 20 years of standing and with rich experience in criminal law, to take up the case of the accused in the enquiry, for whom, remuneration shall be paid by the local Legal Services Authority;

iv. in the enquiry, it is open to the trial Court to examine any witness, including the doctors who had treated the accused prior to the incident; the native doctor to whom the accused was taken on the fateful day, can also be examined;

v. the trial Court may also enquire the doctors who treated the accused after his arrest while he was in judicial custody;

vi. the counsel for the accused may also be permitted to place materials before the Court in support of the case of the accused; **vii.** at the conclusion of the enquiry, if the trial Court is of the opinion that the criminal act fell within the contours of Section 84 IPC, it will then be open to the trial Court to discharge the accused and follow the procedure set out in the proviso (a) to Section 330(3) Cr.P.C.;

viii. In the event of the trial Court not discharging the accused, it shall proceed under the proviso (b) to Section 330(3) Cr.P.C. In that case, the finding arrived at by the trial Court against the accused shall, in no manner, be binding on the accused in the trial against him after he is certified as mentally fit to face the trial in the future. In other words, it will be open to the accused to establish once again before the trial Court that his case would fall within Section 84 IPC, because, what was done when the accused was mentally absent in the Court, cannot be put against him when he is mentally stable subsequently."



4.I am of the view that the present case also can be disposed of on the same lines. The petitioner is permitted to file an application before the trial Court setting out all the circumstances regarding the mental condition of her son. Thereupon, the Court below shall act in terms of the directions already mentioned above. I make it clear that citing the condition of the petitioner's son, the trial in respect of other accused need not be kept pending or deferred beyond a reasonable period. The petitioner's counsel states that the petitioner has no intention to bat for the other accused. She shall file an application under Section 329 of CrPC on 22.11.2021 itself.

5.The criminal original petition is disposed of with the aforesaid directions.

Sd/-

Assistant Registrar (Crl.Side)

// 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 Judge,
Mahila Court,
Pudukkottai.
- 2.The Superintendent of Police,
Pudukkottai District,
Pudukkottai.
- 3.The Inspector of Police,
Udayalipatti Town Police Station,
Pudukkottai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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KMK(CO)
GC/SKN(19.11.2021) 3P 5C

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