



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.09.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.O.P. (MD) No.12756 of 2021

WEB COPY

Ramasamy

... Petitioner

Vs.

State represented by
Sub Inspector of Police,
Nallatinpudhur Police Station,
Nallathinpudur,
Thoothukudi District.
(Crime No.72 of 2017)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order dated 04.11.2020 passed in Crl.M.P.No.1646 of 2020 in C.C.No.41 of 2017 on the file of the learned Judicial Magistrate No.1, Kovilpatti.

For Petitioner : Mr.S.Pon Senthilkumaran
For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor
(Crl.Side)

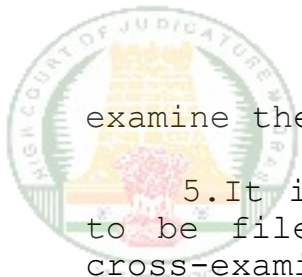
ORDER

This petition is filed seeking to set aside the order passed by the learned Judicial Magistrate No.1, Kovilpatti in Crl.M.P.No.1646 of 2020 in C.C.No.41 of 2017 dated 04.11.2020.

2.The petitioner herein is the 2nd accused before the trial Court and he is facing charges under Sections 294(b) and 325 of IPC. P.W1 to P.W3 were examined in chief on 04.08.2017. Either on the same day or subsequent to that, they were not cross examined by the petitioner. So, it was closed as 'No Cross'. After completing 313 proceedings, no evidence has been produced by defence.

3.The learned counsel for the petitioner would submit that the petitioner filed Cr.M.P.No.1646 of 2020 under Section 311 of Cr.P.C. to recall the aforesaid witness, but it came to be dismissed on 04.11.2020 observing that there is no proper reason assigned by the petitioner to recall the witnesses, who were examined as P.W1 to P.W3 in chief. Seeking to set aside the aforesaid order, this petition came to be filed.

4.The learned counsel for the petitioner would submit that there was a land dispute between the parties. So, for the purpose of getting instructions from the accused persons and for perusal of some documents, the petitioner was not in a position to cross



examine the witnesses.

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 the witnesses cannot be acceptable on the face of it. However, the petitioner is facing serious offences under Sections 325 of IPC. Unless the main witnesses have been cross examined, disposal on merits may not be possible. So, on the sole ground, I am of the considered view that this petition may be allowed with the following conditions:-

i)Let the petitioner deposit a sum of Rs.2,000/- as cost to each of the witnesses 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 witnesses, namely, P.W1 to P.W3 by fixing a particular date for cross-examination.

iii)The petitioner must cross-examine all the witnesses 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.This petition is allowed, with the aforesaid directions and conditions.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

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 Sub Inspector of Police,
Nallatinpudhur Police Station,
Nallathinpudur,
Thoothukudi District.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Judicial Magistrate No.I,
Kovilpatti.

+1 CC to M/s.S.PONSENTHILKUMARAN, Advocate (SR-28120[F] dated
03/09/2021)

**CrI.O.P. (MD) No.12756 of 2021
03.09.2021**

RS (16.09.2021) 3P 5C