



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.2228 of 2022

and

Crl.M.P(MD)No.1635 of 2022

Yuvaraja

... Petitioner/
Petitioner/
Accused

Vs.

The State represented by,
The Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.
(Crime No.45 of 2015)

... Respondent/
Respondent/
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order, passed in Crl.M.P.No:3355 of 2019 in C.C.No:75 of 2015, dated 05.07.2019, passed by the learned Judicial Magistrate, Periyakulam, by allowing the Criminal Original Petition.

For Petitioner	:	Mr.G.Rajan
For Respondent	:	Mr.M.Sakthi Kumar
		Government Advocate (Crl.Side)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

2. The petitioner is facing trial in C.C.No.75 of 2015 on the file of Judicial Magistrate, Periyakulam for the offence under Section 304 (A) IPC. The prosecution witnesses P.W.1 to P.W.6 were examined in chief as early as on 25.06.2019. However, they were not cross-examined. Thereafter, the present petition for recalling of witnesses was filed. The Court below has dismissed the same on 05.07.2019. The said order has been put to challenge in this Criminal Original Petition. This Criminal Original Petition was filed on 27.01.2022. There is absolutely no explanation for the



enormous delay in filing this Criminal Original Petition. I have two difficulties before me.

a) The reason given by the Court below cannot be termed as incorrect. On the other hand, the reasons are fully justified.

b) The petitioner has not come to this Court immediately.

3. Though I am more than inclined to dismiss this Criminal Original Petition, the petitioner's counsel states that the petitioner is a poor load man and that only because he could not mobilize funds, he could not file this Criminal Original Petition immediately. He also wanted this Court to bear in mind that on account of lock down, his livelihood had been virtually wrecked. The petitioner's counsel asserts that the case is still pending and the next hearing date is 15.02.2022. He has also stated that the matter is posted for arguments. If the petitioner is made to face the judgment, he would certainly be convicted. Taking note of the poor economic background of the petitioner, I am inclined to grant him one more opportunity. I am inclined to interfere only because the petitioner's counsel asserts that all the witnesses are still alive. If any of the witnesses have unfortunately passed away in the meanwhile, this order cannot be enforced as far as they are concerned. With this clarification, the order impugned in this Criminal Original Petition is set aside. The prosecution shall cause production of six witnesses on the coming hearing dates. The petitioner is strictly directed to cross examine all the witnesses on the same day when they appear and on no account, the petitioner will adopt any dragging on tactics. If the petitioner fails to cross examine even a single witness, the Court can straightaway proceed to hear arguments. This Criminal Original Petition is allowed on these terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

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,
Periyakulam.

2.The Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.

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

+1 CC to M/s.G.RAJAN, Advocate (SR-4028[F] dated 03/02/2022)

Crl.O.P(MD)No.2228 of 2022

and

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MGJ(09.02.2022) 3P 5C