

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.10840 of 2022

and

Crl.M.P.(MD) No.6814 of 2022

Sundarapandian

...Petitioner

vs

The Inspector of Police
Sivagangai Town Police Station,
Sivagangai District.
In Crime No.433 of 2017

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order dated 13.04.2022 passed in Crl.M.P.No.603 of 2022 in CC.No.23 of 2020 on the file of the Chief Judicial Magistrate Court, Sivagangai District.

For Petitioner : Mr.Pinaygash for
Ms.P.Krishnaveni

For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 13.04.2022 passed in CrI.M.P.No.603 of 2022 in CC.No.23 of 2020 on the file of the Chief Judicial Magistrate Court, Sivagangai District.

2.The learned Counsel for the Petitioner submits that the Petitioner is the accused before the trial Court, the learned Chief Judicial Magistrate, Sivagangai, in CC.No.23 of 2020, which arose out of a road traffic accident.

3.It is the submission of the learned Counsel for the Petitioner that P.W1 and P.W2 were examined on 15.09.2020 and P.W3 to P.W5 were examined on 21.10.2021. It is the further submission of the learned Counsel for the Petitioner that at the time, when the prosecution had examined the prosecution witnesses, the learned Counsel for the Petitioner/accused was not available. Therefore, the cross-examination was deferred. Subsequently, the Petitioner filed a petition in C.M.P.No.603 of 2012 in CC.No.23 of 2020 under Section 311 Cr.P.C., to recall the witnesses, P.W1 to P.W5. The

learned Chief Judicial Magistrate, Sivagangai had dismissed the said Petition, vide order dated 13.04.2022.

4.It is the further submission of the learned Counsel for the Petitioner that the valuable right of the Petitioner for a fair trial is affected by the order passed by the learned Chief Judicial Magistrate, Sivagangai. Therefore, the Petitioner had approached this Court by filing this Petition under Section 482 of Cr.P.C., to meet the ends of justice.

5.The learned Government Advocate (Crl.side) for the Respondent by way of reply submitted that in the Petition filed under Section 311 Cr.P.C., the reasons for not cross examining the witnesses on the date, when the witnesses were available, had not been clearly stated. Therefore, the learned Judge had passed a well reasoned order. He would further submit that in the order itself, the learned Chief Judicial Magistrate, Sivagangai, had quoted the reported ruling of the Hon'ble Supreme Court in the case of ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***.

6.Considering the rival submissions and on perusal of the order passed by the learned trial Judge, the Chief Judicial Magistrate, Sivagangai, when the Hon'ble Supreme Court had laid down the guidelines in *Vinod Kumar's case (cited supra)*, where the Hon'ble Supreme Court had deprecated the practise of recalling the witnesses at the convenience of the accused, thereby delaying the trial, which is anathema to the Constitutional provisions of speedy trial, particularly in Criminal Cases and is a guaranteed right to the citizen of India by the Constitution of India, the very same provision is taken for granted by the accused, who happened to be the citizen of India under the “principle of fair trial”, thereby causing harassment to the witnesses, who are also the citizen of India.

7.The Hon'ble Supreme Court had repeatedly issued the guidelines to the trial Courts not to encourage the dilatory tactics either by the accused or by the Counsels and in the *Vinod Kumar's case*, the Hon'ble Supreme Court had issued directions to the High Courts to circulate the judgment to each of the trial Judges irrespective of the cadre right from Judicial Magistrate up to District Sessions Judge. Therefore, the trial Judges are aware of the guidelines issued in this landmark judgment. Even after the Supreme Court

warning that action will be initiated against the trial Judges for prolonging the trial and encouraging the delaying tactics, the Counsels are ignoring the law laid down by the Hon'ble Supreme Court. As per Article 142, the law laid down by the Hon'ble Supreme Court is law of the land. The trial Judges are bound by the same. When they violate the guidelines, the trial Judges are landing in trouble. Ignoring all these provisions, it is noted that invariably the Petitions are filed before the Trial Court lackadaisically without any reason, which is deprecated by the Hon'ble Supreme Court in the very same Judgment. The reason mentioned by the learned Counsel for the Petitioner cannot at all be accepted when the trial Judge had rejected the Petition in the light of the reported ruling of the Hon'ble Supreme Court in *Vinod Kumar's case*. Therefore, it is not an appropriate case to invoke Section 482 of Cr.P.C.,

8.In fine, this Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Internet:Yes./No
Index:Yes/No
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16.09.2022

SATHI KUMAR SUKUMARA KURUP, J.

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To

- 1.The Inspector of Police
Sivagangai Town Police Station,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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