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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.11788 of 2022
and
Crl.M.P(MD)Nos.7448 and 7449 of 2022

Maliyarasan ...Petitioner

Vs.

State through
The Inspector of Police,
TIW-I Police Station,
Madurai District.
(Crime No.32 of 2016) ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned order, dated 22.01.2021 passed in Cr.M.P.No.354 of 2021 in C.C.No.492 of 2016 on the file of the Judicial Magistrate No.VI, Madurai, and set aside the same in the nature and circumstances of the case.

For Petitioner :Mr.R.Rajamohan

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

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ORDER

This Criminal Original Petition has been filed to set-aside the order, dated 22.01.2021 passed in Cr.M.P.No.354 of 2021 in C.C.No.492 of 2016 on the file of the learned Judicial Magistrate No.VI, Madurai.

2. It is the submission of the learned Counsel for the Petitioner that the Petitioner was arrayed as an accused in C.C.No.492 of 2016 for the offences under Sections 279 and 304(A) of IPC. It is further submitted that PW1 and PW2 were in the place of occurrence, as per the prosecution case. As per the instructions, the learned Counsel for the Petitioner submitted that PW3 alone was in the place of occurrence. They examined PW1 and PW2. This material fact was not put up in cross-examination. Therefore, they sought re-call of PW1 to PW3. The learned Counsel for the Petitioner invited the attention of this Court to Section 311 of Cr.P.C, which reads as follows:

> ***"311. Power to summon material witness, or examine person present.***
>
> *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person*

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already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case".

3.It is stated that any witnesses can be examined or re-called or re-examined, if his evidence appears to be essential to the just decision of the case. This part of the Section 311 of Cr.P.C., reiterated by the learned Counsel for the Petitioner to put forth his contention.

4.The learned Government Advocate (Crl.side) submitted that PW1 and PW2 were examined on 11.09.2007 and PW3 was examined on 27.08.2018. This case is posted on 04.11.2022 'for arguments'.

5. Considering the submission on either side, it is noted that it is an accident case under Section 304 of IPC. The maximum imprisonment is only two years. The case ought to have been disposed of within a period of two years. Instead of that, the learned Judicial Magistrate had not disposed of the case till date for the final report taken cognizance in the year 2016. It is kept pending till 20.01.2021.

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6. The learned Counsel for the Petitioner also invited to the attention of this Court to the fact that there was a Corona lockdown. During this period, witnesses or Counsel or accused were not allowed inside the Court. During which time, this Petition has been filed and the same was dismissed. Therefore, he seeks indulgence of this Court to set aside the order, dated 22.01.2021.

7. There was a Corona lockdown from the month of March 2020 till September 2020. Subsequently, on the resolution passed by the Bar Association in Tamil Nadu, the High Court decided to conduct Court proceedings on a limited matter regarding urgent cases. Therefore, through virtual mode, Court proceedings conducted from the month of September 2020 till March 2021. From first week of April 2021, the Counsels and parties and witnesses were allowed in the trial Courts. While so, the submission of the learned Counsel for the Petitioner cannot be accepted. Even though the order passed on 22.01.2022, as the witnesses were available on 11.09.2017, they did not prefer to cross examine prior to the lockdown. The cases of the year 2016 kept pending due to the attitude of the appearing Counsel. The trial Judges are apprehending to dispose of the

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case with the fear that the valuable defence of the accused damaged, if the orders are passed. The right to fair trial is guaranteed right to the citizens of this country by the Constitutions of India, which is interpreted by the accused in his favour. It also includes the rights of the victims of the crime, who are also citizens of this country. When it is a general principle of the criminal law, particularly, in cases where witnesses are examined, during trial, when witnesses were available in Court, those shall be cross examined then and there. Invariably in all Courts throughout India, the witnesses are not cross examined then and there by the appearing Counsels utilizing the provisions under Section 311 of Cr.P.C. to re-call witnesses on their convenience.

8. This can be put an end in view of the reported Judgment of the Hon'ble Supreme Court in the case of ***Vinod Kumar v. State of Punjab*** reported in ***(2015) 1 MLJ (Crl) 288 (SC),*** which was circulated by the Hon'ble Supreme Court to the High Courts and the entire trial Court throughout India. Therefore, even though litigant/accused or his Counsel can claim any excuse, the trial Judges will not be able to over come the said judgment, which have been notified through proper channel. Therefore, the

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trial Judges are answerable to the High Court for the delay in early disposal or delay in trial. In these circumstances, dismissal of the Petition in Crl.M.P.No.354 of 2021 cannot be found fault with, as stated by the learned Counsel for the Petitioner that there was a restrictions of the appearance of the parties or witnesses during the period of the order passed by this Court. It is to be noted that the case of this nature kept pending due to the conduct of the accused and the Counsel from the year 2016 till 2021. Therefore, exercising its extraordinary power under Section 482 of Cr.P.C. does not arise. In view of the above discussion, this Petition has no merit.

7. Accordingly, this Criminal Original Petition stands dismissed. Consequently connected miscellaneous petitions are closed.

03.11.2022

Index:Yes/No
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To

1.The Judicial Magistrate No.VI,
Madurai.

2.The Inspector of Police,
TIW-I Police Station,
Madurai District.

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

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