



Crl.O.P(MD)No.13623 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P(MD)No.13623 of 2022

and

Crl.M.P(MD)No.8695 of 2022

Karunanithi

... Petitioner/Sole Accused

Vs.

State Rep.by

The Inspector of Police,

Karambakkudi Police Station,

Pudukkottai District.

(Crime No.180 of 2016)

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the order in Cr.M.P.No.175 of 2021 in S.C.No.122 of 2017, dated 23.12.2021 passed by the Additional Assistant Sessions Judge, Pudukkottai and set aside the same as illegal.

For Petitioner : Mr.K.C.Maniyarasu

For Respondent : Mr.R.Sureshkumar

Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to set aside the order in Cr.M.P.No.175 of 2021 in S.C.No.122 of 2017, dated 23.12.2021 passed by the learned Additional Assistant Sessions Judge, Pudukkottai.



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2.The learned counsel appearing for the petitioner submitted that the case has been registered against the petitioner in Crime No.180 of 2016 for the offences punishable under Sections 294(b) and 307 IPC. The petitioner has also gave a complaint against the defacto complainant, which was registered in Crime No.179 of 2016 for the offence punishable under Sections 294(b), 324 and 506(ii) of IPC. After filing the charge sheet in both the cases, the petitioner had taken steps to transfer the case in C.C.No.84 of 2017 on the file of the Judicial Magistrate Court, Alangudi, to the file of the Sub Court, Pudukkottai, to try along with S.C.No.122 of 2017, which was allowed by the Principal District Judge, Pudukkottai on 19.07.2018. In both the cases, witnesses have been examined and now it is pending due to lock down and severance of Covid-19 Pandemic, the petitioner's counsel not able to cross examine PW1 to PW6. Hence, he filed a petition in Cr.M.P.No.175 of 2021 to recall PW1 to PW6, which was dismissed by the learned Additional Sub Judge, Pudukkottai without any valid reason, which is unsustainable. Hence, he filed this petition.

3. The learned Government Advocate (CrI.side) appearing for the respondent police submitted that it is a case in counter. Both the cases are pending before the learned Additional Assistant Session Judge, Pudukkottai in C.C.No.84 of 2017 and S.C.No.122 of 2017. In S.C.No.122 of 2017,



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prosecution witnesses PW1 to PW6 were examined. At the time of chief examination, the petitioner has not cross examined the witnesses. Subsequently, he filed a petition in Cr.M.P.No.175 of 2021 to recall PW1 to PW6, which was rightly dismissed by the learned Additional Sub Judge, Pudukkottai. There is no reason to interfere with the order passed by the trial Court and pleaded to dismiss this petition.

4.I have considered the submissions made by both the parties.

5.A perusal of records reveals the fact that the petitioner is an accused in S.C.No.122 of 2017 and the defacto complainant is an accused in C.C.No.84 of 2017. Both the cases are case in counter case and pending before the learned Additional Assistant Session Judge, Pudukkottai for trial. In both cases, prosecution witnesses were examined and posted for further examination of witnesses. In the impugned order in Cr.M.P.No.175 of 2021 in S.C.No.122 of 2017, the trial Court has dismissed the petition with the prayer for recalling PW1 to PW6 for cross examination. No doubt, the witnesses have to be cross examined on the date when chief examination has been conducted. For some reasons, the petitioner not cross examined the prosecution witnesses. In order to meet the prosecution case effectively, a fair chance has to be given to the petitioner to face the prosecution case and place his defense. Therefore, I am



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inclined to give an opportunity to the petitioner to place his defense, by way of cross examining the prosecution witnesses viz., PW1 to PW6.

6.Accordingly, the impugned order, dated 23.12.2021 in Cr.M.P.No.175 of 2021 in S.C.No.122 of 2017 passed by the Additional Assistant Sessions Judge, Pudukkottai is hereby set aside, on condition that the witnesses viz., PW1 to PW6 have to be cross examined by the petitioner, on the date, to be fixed by the trial Court, without seeking any adjournment. The petitioner has to pay to and fro cost to the witnesses viz., PW1 to PW6 to come back again to the Court for giving evidence. The learned Additional Assistant Sessions Judge, Pudukkottai, is directed to recall the witnesses viz., PW1 to PW6 in S.C.No.122 of 2017, enable the petitioner to cross examine the witnesses PW1 to PW6 and further collect the cost for the witnesses PW1 to PW6 from the petitioner and pay to the witnesses PW1 to PW6.

7.Accordingly, this Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

- 1.The Additional Assistant Sessions Judge,
Pudukkottai,
- 2.The Inspector of Police,
Karambakkudi Police Station,
Pudukkottai District.
- 3.Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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