

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.14373 of 2015

and

M.P.No.1 of 2015

Mohammed Rafeek

...Petitioner

Vs

The State rep.by
The Inspector of Police,
All Women Police Station,
Avinashi,
Tiruppur District.

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 28.05.2015 in CMP No.174 of 2015 in SC No.83 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 28.05.2015 in CMP No.174 of 2015 in SC No.83 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the material placed on record.

3.The petitioner/accused got married to the deceased on 15.09.2011. On 06.09.2013, the deceased died due to burn injuries. In respect of the said incident, the respondent police registered a case in Crime No.15 of 2013 for offences under Sections 498A and 307 IPC and lateron it was altered to one under Sections 498A, 304B

and 302 IPC. The Police completed the investigation and filed the final report before the jurisdictional Magistrate and the case was committed to the Court of Sessions and was taken on file as SC.No.83 of 2014. The case is pending for trial on the file of the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur. After framing of charges, the prosecution examined 11 witnesses. At that juncture, the petitioner/accused filed CMP.No.174 of 2015 under Section 311 CrPC for recalling PW1 to PW4, PW7, PW9 and PW11 for further cross examination. This petition was objected to by the prosecution. The trial Court Judge, after hearing both sides, dismissed the petition on 28.05.2015, aggrieved by which the accused has come up with this petition before this Court.

4.From the trial Court records, it appears that the petitioner was initially granted bail during the investigation and during the course of trial, he had absconded and therefore, the trial Court could not proceed further. Hence, Non-Bailable Warrant was issued against the petitioner and he was arrested and remanded to the custody. 12 witnesses were examined by the prosecution and the petitioner was questioned under Section 313 CrPC. When the matter was posted for the production of defence witnesses, the petitioner filed an application under Section 311 CrPC to recall the aforesaid witnesses. The trial Court dismissed the said application on the ground that the petition has been filed only to protract the trial.

5.Mr.M.Guruprasad, learned counsel for the petitioner submitted that the petitioner's precious right for further cross examination of witnesses has been denied by the trial Judge and therefore, prejudice has been caused to the petitioner.

6.Admittedly, the petitioner/accused has cross examined all the witnesses. It is not the case of the petitioner/accused that he had not cross examined the witnesses. If the petitioner wants to further cross examine the witnesses, he must disclose good reasons in his petition under Section 311 CrPC. In this case, the petitioner has not given any valid reason for recalling the aforesaid witnesses and he has merely stated that he wants to put some more questions to the witnesses. Therefore, the trial Court has rightly rejected the said prayer. This Court perused the evidence adduced by the prosecution and found that the petitioner has substantially cross examined all the witnesses and has elicited answers in his favour. Therefore, the order of the trial Court cannot be said to be wholly erroneous.

7.Mr.Guruprasad, learned counsel for the petitioner submitted that the police officers require to be cross examined with regard to certain contradictions. Since the petitioner is facing a prosecution for grave charges, this Court is of the view

that, to serve the interest of justice, the petitioner should be permitted to cross examine PW9 and PW11 alone and not the other witnesses. Accordingly, this petition is partly allowed. The order of the trial Court dated 28.05.2015 is set aside as regards the request for cross examining PW9 and PW11. Hence, this Court directs the petitioner/accused to cross examine PW9 and PW11 on 24.06.2015 or any other subsequent date, as may be decided by the learned trial Judge.

With the above directions, this Criminal Original Petition is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court,
Tiruppur.

2.The Inspector of Police,
All Women Police Station,
Avinashi,
Tiruppur District.

3.The Public Prosecutor,
High Court, Madras.

1 CC to Mr.M.Guruprasad, Advocate SR.No. 29755

WEB COPY

Cr1.OP.No.14373 of 2015
and M.P.No.1 of 2015

GGK (CO)
PSI (16.07.2015)