

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2015

Coram:

THE HON'BLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.7245 OF 2015
and M.P.No.1 of 2015

1.Jayavelu
2.Subramani
3.Ulaganathan
4.Venkatesan

...

Petitioners/Accused

Vs.

State rep. by
The Inspector of Police,
B4, Baluchetty Chathiram Police Station,
Kancheepuram District.

...

Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order passed by the learned Mahila Judge, Chengalpet, in CMP.No.141 of 2015 in SC.No.5 of 2011 dated 24.02.2015.

For Petitioners : Mr.V.Sairam

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the learned Mahila Judge, Chengalpet, in CMP.No.141 of 2015 in SC.No.5 of 2011 dated 24.02.2015.

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

3. It is seen that the petitioners are accused in S.C.No.5 of

2011 on the file of the learned Mahila Judge, Chengalpet, for offences under Section 306 IPC and Section 4-B of the Tamilnadu Prohibition of Women Harassment Act, 1998. It is also seen that P.W.1 and P.W.2 were examined in chief and they were also cross-examined. After the said case was posted for judgment on 26.02.2015, the Petitioner/accused filed an application in CrI MP.No.141 of 2015 under Section 311 Cr.P.C on 18.02.2015 for recalling PW1 and PW2 on the ground that the counsel has failed to ask some important questions in the cross-examination, which will go into the root of the case.

4. It is seen that P.W.2 had already turned hostile. P.W.1 is the husband of the deceased lady. Vide order dated 24.02.2015, the trial Court dismissed C.M.P.No.141 of 2015 in SC.No.5 of 2011, by a well considered order. This Court does not find any serious infirmity in the order. But, it is seen that the petitioners are facing prosecution for a grave offence and therefore, to serve the interest of justice, permission may be granted to recall PW1 and P.W.2, with some caveats. The next hearing date in this case is 06.05.2015. This Court directs the respondent police to produce P.W.1 and P.W.2 before the trial Court and the petitioners shall pay a sum of Rs.2,500/- each to P.W1 and P.W.2 as costs. On such payment, P.W.1 and P.W.2 shall be permitted to be cross examined by the counsel on that date. If the counsel fails to cross examine on that date, this order shall stand annulled.

5. This Court is also conscious of the fact that attempts are made by the defence to recall important witnesses, after having gained them over for turning them hostile. Such attempts should be cautiously thwarted. The learned trial Judge may be vigilant and is at liberty to invoke the provision of Section 165 of the Indian Evidence Act and put necessary questions to the witnesses, if the trial Court senses that the defence had gained over the witness. In Vinodhkumar v. State of Punjab reported in (2015) 1 Scale 542, a prosecution witness was examined in chief on 13.09.1999, and he supported the prosecution case. He was cross examined on 25.05.2001 and he supported the defence case. The Hon'ble Supreme Court accepted the chief examination and convicted the accused. Similarly, in Nayan Kumar Sivappa v. State of Maharashtra reported in (2015) 2 Scale 330, the witness supported the prosecution in chief and in the cross examination, supported the accused. The Hon'ble Supreme Court accepted the evidence in chief and convicted the accused. The trial Court shall bear in mind these Judgments and proceed with the

appreciation of the evidence of the witnesses in chief examination, if the defence gains over PW1 and PW2. This Court is constrained to note the abovesaid safeguards in order to strike an harmonious balance between the right of the accused to have a fair trial and the capability of the accused to abuse the provisions of Section 311 CrPC for gaining over witnesses.

6. Though I have noted that there is no infirmity in the order of the trial Court dismissing the petition, in view of the directions that are issued above, I am constrained to set aside the order in CrI.MP.No.141 of 2015, dated 24.02.2015, technically.

With the above direction, this petition is allowed in the above terms. Consequently, connected miscellaneous is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Inspector of Police,
B4, Baluchetty Chathiram Police Station,
Kancheepuram District.

2.The Mahila Court, Chengalpet.

3.The Public Prosecutor,
High Court, Madras.

1 cc to Mr. V.V.Sairam, Advocate, SR.No.20015

ug(co)
pmk.22.4.2015

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