

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.20881 of 2016

and

Crl.MP.No.9679 of 2016

Deepa

..Petitioner

Vs

The State rep.by
The Inspector of Police,
District Crime Branch,
Salem.

Cr.No.13 of 2009.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 22.08.2016 made in C.M.P.No.3187 of 2016 in C.C.No.151 of 2010 on the file of the District Munsif Cum Judicial Magistrate at Omalur, by allowing this petition.

For Petitioner	:	Mr.R.Marudhachalamurthy
For Respondent	:	Mr.C.Emalias Additional Public Prosecutor

ORDER

This criminal original petition has been filed to set aside the order dated 22.08.2016 made in C.M.P.No.3187 of 2016 in C.C.No.151 of 2010 on the file of the District Munsif Cum Judicial Magistrate at Omalur.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the Respondent.

3. It is seen that the petitioner is facing trial in C.C.No.151 of 2010 for offences under Sections 120-B, 465, 468, 471 r/w 120B and 420 r/w 511 IPC before the District Munsif cum Judicial Magistrate, Omalur. The prosecution examined 13 witnesses, of whom, PW-11, Hand Writing Expert was examined-in-Chief on 18.06.2013 and PW-12, Investigating Officer was examined-in-chief on 27.10.2015. The petitioner did not choose to cross-examine those witnesses, when they were examined-in-chief.

4. Thereafter, the petitioner filed an application to recall PWs-1 to 11, but process fee was not paid. Again, the petitioner has filed CMP No.4126 of 2016, which was allowed by the trial Court and process fee, once again, was not paid by the petitioner. On 27.06.2016, PW-11 Hand Writing Expert came to the Court, but he was not cross-examined on the ground of boycott of courts by advocates.

5. The party themselves cross-examined PW-11 in the presence of their counsel. Again, CMP No.2959 of 2016 was filed for recalling PW-13, Investigating Officer, which was allowed by the Court on 28.07.2016. PW-13 was also cross examined thereafter on 04.08.2016. The accused were examined under Section 313 Cr.P.C and now, the accused filed a fresh petition in CMP No.3187 of 2016 under Section 311 Cr.P.C for recalling PW-11 and PW-13 for further cross examination on the ground that the cross examination was not properly done. The trial court dismissed the CMP No.3187 of 2016 on 22.08.2016, challenging which, the petitioner is before this Court.

6. Mr.R.Marudhachalamurthy, learned counsel for the petitioner submitted that the allegation against this petitioner is that she had purchased a property from A1. A1 and her husband had sold it earlier to the defacto complainant. In the light of these allegations, he contended that one more opportunity should be given to the petitioner to cross examine PW-11 and PW-13.

7. Per contra, Mr.C.Emalias, learned Additional Public prosecutor submitted that the trial has been pending from the year 2010. PW-11 was cross examined-in-chief on 18.06.2013. Repeatedly, the accused has been filing petition under Section 311

Cr.P.C. which was allowed by the Court, but, they did not pay Batta. Ultimately, PW-11 came on 05.07.2016 and he was cross examined by the accused and the said cross-examination runs to three pages by A3.

8. This Court gave its anxious consideration to the rival submissions.

9. The Hon'ble Supreme Court, in ***Harish Uppal [Ex.Capt.] Vs Union of India reported in [2003] 2 SCC 45***, has held that boycott of Courts is illegal and that, should not be encouraged. In this case, Chief examination of PW-11 was done on 18.06.2013 and on that date, there was no boycott of courts. But, for the reason best known to the accused, PW-11 was not cross examined. In ***A.G. Vs. Shiv kumar Yadav and another reported in 2015 (9) Scale 649***, the Hon'ble Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C. A witness cannot be made to come again and again and give evidence on the whims and fancies of the accused.

10. In the considered opinion of this Court, the order passed by the trial Court, considering the facts and circumstances, cannot be said to be illegal warranting interference by this Court.

In the result, the criminal original petition is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed.

16.09.2016

sms

To

1. The Inspector of Police,
District Crime Branch,
Salem.
Cr.No.13 of 2009.
2. The District Munsif Cum Judicial Magistrate,
Omalur,
- 3.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J.

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