

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

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

Crl.O.P. No.22057 of 2016

Jambu @ Saravanan @ Shanmugam

... Petitioner

Vs.

State rep by
The Sub Inspector of Police
Kondalampatty Police Station
Salem District

... Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to set aside the order passed in Crl.M.P.No.415 of 2016 in S.C.No.76 of 2010 dated 06.08.2016 on the file of the Sessions Judge, Mahila Court, Salem.

For petitioner : Mr.K.Gandhi Kumar

For Respondent : Mr.C. Emalias
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.415 of 2016 in S.C.No.76 of 2010 dated 06.08.2016 on the file of the Sessions Judge, Mahila Court, Salem.

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

3. It is seen that this petitioner was prosecuted in Cr.No.1027 of 2008 for offence u/s 498-A, 304-B r/w Section 4 of the Dowry Prohibition Act, 1961 and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and is facing trial in S.C.No.76 of 2010 before the Sessions Judge, Mahila Court, Salem. While so, the petitioner was released on bail and during the pendency of the case before the Sessions Court, he absconded in the year 2011 and was re-arrested on 16.11.2015. Since then he is in custody. The prosecution

examined 12 witnesses, of whom the accused has cross examined 11 witnesses. Now, when the case is posted for arguments, the accused filed a petition in CrI.M.P.No.415 of 2016 in S.C.No.76 of 2010 u/s 311 Cr.P.C. to recall all the witnesses, which was dismissed by the trial Court by order dated 06.08.2016, challenging which the petitioner is before this Court.

4. Learned counsel for the petitioner strenuously contended that the petitioner is in custody and that he has changed his counsel and only thereafter, his new counsel realised that certain important questions were not put to the prosecution witnesses and therefore, an opportunity should be given to the accused to recall the aforesaid witnesses.

5. Per contra, learned Additional Public Prosecutor submitted that the petitioner has cross examined extensively P.Ws.1 to 11 and that only in order to protract the case, he has filed the present petition.

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

7 In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has clearly stated that even if the accused is in custody, that cannot be a good reason to recall prosecution witnesses and tire them out. In State of Haryana v. Ram Mehar [(2016) 8 Scale 192], the Supreme Court has reiterated the principle, which reads as follows:

"37. Recalling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix.

38. . . . Suffice it to say, a criminal trial does not singularly centres around the accused. In it, there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for, the society seeks justice."

In view of the aforesaid categorical pronouncement of the judgment of the Supreme Court, this is not a fit case to interfere at this juncture. Accordingly, this petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gms

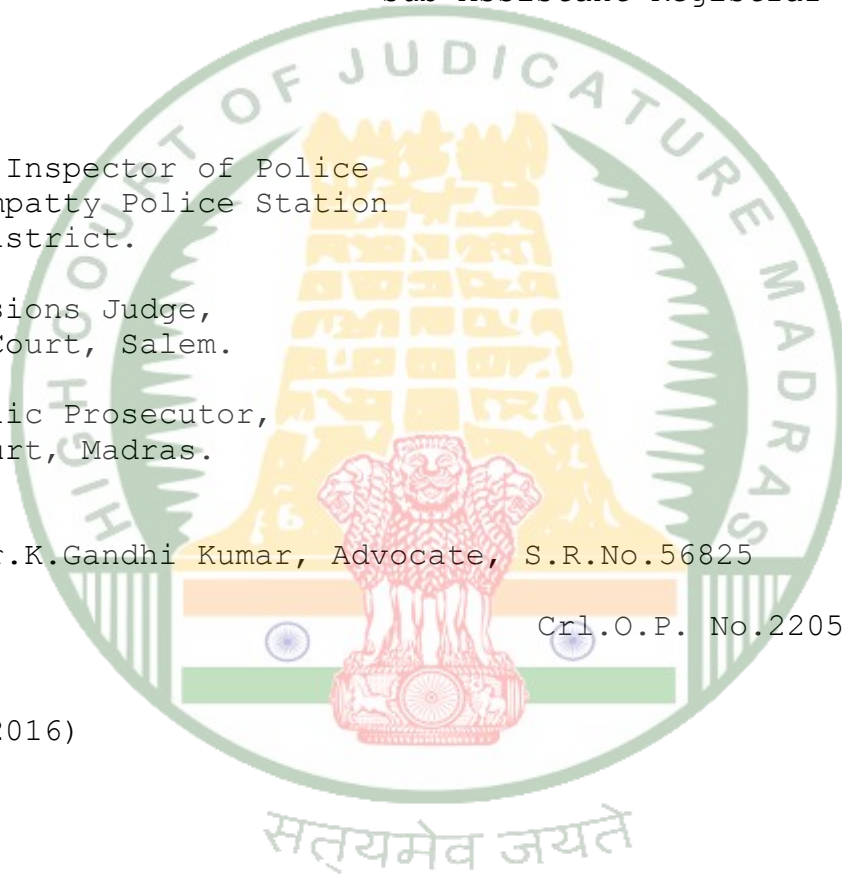
To

- 1.The Sub Inspector of Police
Kondalampatty Police Station
Salem District.
- 2.The Sessions Judge,
Mahila Court, Salem.
- 3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Gandhi Kumar, Advocate, S.R.No.56825

CrI.O.P. No.22057 of 2016

ALA(CO)
CA(24/10/2016)



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