

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.25524 of 2016

Rajeshkumar

...Petitioner

Vs.

State Rep. By
Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.

...Respondent

PRAYER:

Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in S.C.No.226 of 2014 on the file of the Mahila Court, Coimbatore and set aside the order dated 05.11.2016 dismissing the order passed in C.M.P.No.512 of 2016.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to call for the records in S.C.No.226 of 2014 on the file of the Mahila Court, Coimbatore and set aside the order dated 05.11.2016.

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

3. The petitioner is facing prosecution in S.C.No.226 of 2014 before the Mahila Court, Coimbatore, for the offences u/s 498A and 306 IPC. It is the case of the prosecution that the petitioner's wife Kalaiarasi committed suicide on 26.04.2014

in her parental home and that the petitioner has inflicted acts of cruelty and abetted the suicide. The trial began before the said Court with the examination of Devagi (PW-1), Sundaram (PW-2), Ilavarasi (PW-3) and Suresh (PW-4) on 02.12.2015 with the examination-in-chief. On that day, the accused did not choose to cross-examine the witnesses for reasons best known to him. Thereafter, Amutha (PW-12), the Investigation Officer was examined-in-chief on 05.10.2016. She was also not cross-examined. The petitioner filed C.M.P.No.512 of 2016 in S.C.No.226 of 2014 under Section 311 Cr.P.C., to recall PW-1, PW-2, PW-3, PW-4 and PW-12, which was dismissed by the trial Court on 05.11.2016, aggrieved by which, the petitioner is before this Court.

4. On a reading of the petition filed by the petitioner in C.M.P.No.512 of 2016, it is seen that he has not even given any good reason for recalling the said witnesses. Just because, the accused has changed his counsel, he would not get a right to recall the prosecution witnesses.

5. This Court does not find any serious infirmity in the order passed by the Trial Court. However, it is seen that the petitioner is facing a charge under Section 306 IPC, for which, the punishment prescribed is ten years imprisonment. It is not a case, where, after having cross-examined the witnesses, the petitioner is seeking to recall the witnesses for further cross-examination.

6. Taking into consideration the facts and circumstances of this case, this Court is of the view that it will serve the interest of justice, if the petitioner is permitted to cross-examine witnesses viz., Devagi (PW-1) and Amutha (PW-12)-Investigation Officer on costs. On a date fixed by the Trial Court, Devagi (PW-1) and Amutha, Investigation Officer (PW-12) shall be recalled and on their appearance, the petitioner shall pay costs of Rs.1,000/- (Rupees one thousand only) to each of the witnesses and cross-examine them on the same day. On the date of appearance of the two witnesses, if the petitioner does not cross-examine them, he will forfeit his right completely. It is made clear that boycott of Courts shall not be a reason for the petitioner for not cross-examining the witnesses. The Trial Court is directed to complete this exercise within four weeks from the date of receipt of a copy of this order. If Devagi PW-1, is not available to give evidence, the Trial Court need not summon her.

With the above directions, the Criminal Original Petition is partly allowed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Balasubramaniam, Advocate, S.R.No. 68524

Crl.O.P.No.25524 of 2016

AD (CO)
PSI (28/12/2016)

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