

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.25644 of 2016 and Crl.MP.No.12489 of 2016

Maruthapillai

...Petitioner

Vs.

State of Tamil Nadu rep. by
The Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to set aside the order dated 15.11.2016 made in Crl.M.P.No.558 of 2016 in S.C.No.27 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

For Petitioner : Mr.V.V.Sairam

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

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order dated 15.11.2016 made in Crl.M.P.No.558 of 2016 in S.C.No.27 of 2015 on the file of the Sessions Court (Fast Track Mahila Court), Namakkal.

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

3. Today, Mr.A.Senthil Kumar, Inspector of Police, Mohanur Police Station, Mohanur, Namakkal, is present.

4. The petitioner is facing prosecution in S.C.No. 27 of 2015 for an offence u/s 376 IPC before the Sessions Judge (Fast Track Mahila Court), Namakkal. It is the case of the prosecution that the petitioner had committed rape on a deaf and dumb girl (PW-3). The prosecution examined the witnesses and after one round of litigation to the High Court, the victim girl (PW-3) was cross-examined by the accused on 24.10.2016.

5. In the meantime, the bail of the accused was cancelled and since the petitioner adopted dilatory tactics, the Trial Court remanded him to custody and now the petitioner is in judicial custody and his bail application also has been dismissed by this Court.

6. Under such circumstances, the petitioner has filed an application in CrI.M.P.No.558 of 2016 in S.C.No.27 of 2016 under Section 311 Cr.P.C. to recall PWs-1, 2, 4 to PW-11, which has been dismissed by the Trial Court on 15.11.2016, challenging which, the petitioner is before this Court.

7. It is seen that the petitioner has filed a lengthy application unusually for recalling the witnesses. The Trial Court had considered the plea and has given cogent reasons for dismissing the petition by placing reliance upon the judgment of Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (CrI.) 288]. However, though in State of Haryana Vs. Ram Mehar & others [2016 (8) Scale 192], the Supreme Court has held that just because the accused is in custody, that, by itself, cannot be a reason for recalling the prosecution witnesses, yet, in the facts and circumstances of the case, this Court is of the view that it will serve the interest of justice, if PW-2 and PW-11 alone are alone directed to be recalled on certain conditions and on payment of costs.

8. Mr.V.V.Sairam, the learned counsel for the petitioner submitted that the petitioner is lodged in Central Prison, Salem and is being brought every time from there to the Trial Court at Namakkal and this itself causes delay.

9. Under such circumstances, the learned counsel for the accused gave an undertaking that, if the witnesses are present even in the absence of the accused, the counsel on record for the accused will cross-examine PW-2 and PW-11 and will not insist upon the presence of the accused.

10. On the aforesaid undertaking, this Court directs the Trial Court to find out the availability of PW-2 and PW-11 and recall them on a date fixed by the Court. On their appearance, they should be paid costs of Rs.500/- each. The learned counsel for the accused shall cross-examine the witnesses without insisting upon the presence of the accused. If he fails to cross-examine, the accused would forfeit his right to recall the said witnesses. It is made clear that the petitioner should also not dispute his identity.

With the above directions, the Criminal Original Petition is ordered accordingly. Consequently, connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS V.)

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal.

2. The Sessions Judge,
Fast Track Mahila Court,
Namakkal

3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.V.Sairam, advocate, sr.69433.

rp(co)
krd 19/12

Cr1.O.P.No.25644 of 2016



WEB COPY