

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM

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

Crl.O.P.No.25789 of 2016

and Crl.M.P.No.12635 of 2016

Mugilan

Petitioner/Accused

vs.

Inspector of Police

(Law and Order)

NI Royapuram Police Station

Royapuram, Chennai 13.

Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. to permit the petitioner to cross examine the witnesses 1 to 8 by setting aside the order passed by Principal Judge, City Civil Court, Chennai, in Crl.R.C.No.52/2016 dated 29.06.2016 filed against criminal MP No.1483/2016 in C.C.No.350/2015 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai u/s 311.

For petitioners

Mr.L.Prabahar

For respondent

Mr.C.Emalias,

Additional Public Prosecutor

ORDER

This petition has been filed to permit the petitioner to cross examine the witnesses 1 to 8 by setting aside the order passed by Principal Judge, City Civil Court, Chennai, in Crl.R.C.No.52/2016 dated 29.06.2016 filed against Crl.MP. No.1483/2016 in C.C.No.350/2015 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai u/s 311 Cr.P.C.

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

3. The petitioner is facing prosecution in C.C.No.350 of 2015 before XVI Metropolitan Magistrate Court, George Town, Chennai for offence u/s 354-A IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and after framing of charges, prosecution commenced with the examination of P.Ws.1 to 3 on 09.07.2015. On that day, the witnesses were not examined, despite the judgment of the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288], wherein, the Supreme Court has very clearly stated that the prosecution witnesses

should be cross examined on the day they are examined-in- chief.

4. Pursuant to the directions of the Supreme Court, the Registrar General of this Court has issued a direction to all the trial Courts, directing the trial Courts to comply with the parameters of law laid down by the Supreme Court in the aforesaid case. Despite the aforesaid direction, the accused filed an application u/s 311 Cr.P.C. on 02.02.2016, which was allowed by the trial Court and the witnesses were present on 10.02.2016, 01.03.2016, 07.04.2016 and 21.07.2016. The learned counsel for the accused did not chose to cross examine the witnesses. Therefore, the case was closed for further proceedings. Thereafter, the accused filed a second petition in CrI.M.P.No.1483 of 2016 to recall the witnesses, which was dismissed by the trial Court on 06.05.2016, holding that the witnesses were present, but the accused had not chosen to cross examine them. Challenging the said order, the accused filed CrI.R.C.No.52 of 2016 before the Principal Sessions Judge, Chennai and there was no representation for the accused before the Sessions Judge. The learned Principal Sessions Judge went into the records and dismissed the revision petition by upholding the trial Court's order. Challenging the orders passed by the Courts below, the accused is before this Court invoking his inherent jurisdiction u/s 397(c) Cr.P.C.

5. Normally, if once a person elects to approach the Sessions Court, he is precluded from filing a second revision petition before the High Court. However, in cases where it is shown that the orders passed by the Courts below suffer from grave jurisdictional error, it is open to the High Court to entertain an application u/s 482 Cr.P.C. In this case, this Court does not find any jurisdictional error in the orders passed by the Courts below. The petitioner was given ample opportunities to cross examine the witnesses, which he did not avail of. In State of Haryana v. Ram Mehar [(2016) 8 Scale 192], the Supreme Court has very clearly stated that a petition u/s 311 Cr.P.C. should not be allowed on the mere asking, as that would cause grave injustice to the victims and the witnesses who are made to come to the Court for no fault of theirs. This Court is bound by the law laid down in the said judgment and therefore, this Court does not find infirmity in the orders passed by both the Courts below.

In the result, this petition is dismissed. Consequently,
connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

gms

To

1.The Inspector of Police
(Law and Order)
NI Royapuram Police Station
Royapuram, Chennai 13.

2.The Principal Judge, City Civil Court,
Chennai.

3.XVI Metropolitan Magistrate Court,
George Town, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.L.Prabakar Advocate sr 69878

Cr1.O.P.No.25789 of 2016

sr(co)
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