

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.25949 of 2016
and
Crl.MP.No.12839 of 2016

1. Alfrin Iqnesious
2. Soosai @ Mariyathas
3. Mathalaiyamma
4. Williyams
5. Jaisa
6. Sagayam .. Petitioners

Vs

State rep. by Inspector of Police
All Women Police Station
Mettur. ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order dated 24.10.2016 made in C.M.P.No.4025 of 2016 in C.C.No.17/2011 on the file of the Judicial Magistrate No.1, Mettur and consequently permit the petitioners to cross examine the witnesses namely, P.W.1 to P.W.4 by allowing this Criminal Original Petition.

For Petitioners : Mr.C.Munusamy

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

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 24.10.2016 made in C.M.P.No.4025 of 2016 in C.C.No.17/2011 on the file of the Judicial Magistrate No.1, Mettur and permit the petitioners to cross examine the witnesses viz., P.W.1 to P.W.4.

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

3. The petitioners are facing prosecution in C.C.No.17 of 2011 before the Judicial Magistrate No.1, Mettur for offences under Section 498-A, 294(b) and 506(ii) IPC r/w Section 4 of

the Dowry Prohibition Act. The trial commenced in the year 2009 and the prosecution examined P.W.1 to P.W.4. At that time, the accused did not choose to cross examine any of the witnesses. Thereafter, in the year 2016, the accused have filed an application in C.M.P.No.4025 of 2016 under Section 311 Cr.P.C to re-call P.W.1 to P.W.4, which has been dismissed by the trial Court on 24.10.2016, challenging which, the accused are before this Court.

4. Learned counsel appearing for the petitioners submitted that the accused should be given one opportunity to cross examine the witnesses, which has been denied by the trial Court.

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

6. It is seen that four witnesses were examined in the year 2011 and from 2011 to 2016, the accused kept silent. In the year 2016, the accused filed a petition under Section 311 Cr.P.C. which does not even contain any reason for re-calling the aforesaid witnesses. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288], the Supreme Court has held that the petitioner shall cross-examine the witnesses on the same day they are examined-in-chief and deprecated the practice of re-calling witnesses after tiring them out. Relying on the aforesaid judgement, very recently, the Supreme Court in State of Haryana -Vs- Ram Mehra & Others Etc., [2016 (8) Scale 192] has held that the Court should not re-call the witnesses, on the mere asking of the accused.

7. As stated above, in the petition filed before the trial Court, the accused have not even given any reason for re-calling P.W.1 to P.W.4. They have filed the petition in a very cavalier manner, as if they have a fundamental right to re-call the witnesses. Therefore, the order passed by the trial Court does not suffer from any infirmity.

8. The learned counsel appearing for the petitioners contended that the accused will even pay costs to the witnesses, if they are re-called and that they will cross-examine the witnesses on the same day without adopting any dilatory tactics.

9. Under such circumstances, this Court directs the trial Court to ascertain from the police whether P.W.1 is available. If she is available on the date fixed by the trial Court, she may be summoned. On her appearance, the accused should pay Rs.2,000/- to P.W.1. Learned Additional Public Prosecutor shall make P.W.1 read the chief examination and refresh her memory and thereafter P.W.1 should be cross-examined by the accused on the same day.

10, As regards, re-calling other witnesses viz., P.W.2 to P.W.4, the same is negatived.

This petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Mettur.
2. The Inspector of Police
All Women Police Station
Mettur.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Munusamy, Advocate, S.R.No.70735

CRL.OP.No.25949 of 2016

RK(CO)
MA(27/12/2016)

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