

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.5349 of 2016
and
Crl.M.P.No.2755 of 2016

Pitchaipillai

.. Petitioner

Vs.

State by:

The Inspector of Police,
Kuvagam Police Station,
Ariyalur District.
(Crime No.121 of 2015)

.. Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records in order in Crl.M.P.No.34 of 2016 in Spl.S.C.No.4 of 2016 (on the file of the Fast Track Mahila Court, Ariyalur) dated 04.03.2016 and set aside the same and permit the petitioner to cross examination of the prosecution witnesses.

For Petitioner : Mr.P.Pugalenthir

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition for setting aside the order passed on 04.03.2016 in Crl.M.P.No.34 of 2016 in Spl.S.C.No.4 of 2016 on the file of the Fast Track Mahila Court, Ariyalur.

2.Earlier, the petitioner filed a petition in Crl.M.P.No.28 of 2016 to recall P.W.1 to P.W.6. Even though the said petition was allowed with conditions, the petitioner had complied with the first condition by paying cost to P.W.1 to P.W.6 but he did not comply with the second condition that the petitioner shall cross examine the witnesses. Again, he filed another petition in Crl.M.P.No.34 of 2016 and sought for time to

cross examine the witnesses. After hearing both sides, the Trial Court has dismissed the said petition by holding that it is an abuse of process of law in the light of Vinod Kumar vs. State of Punjab. Hence, the present petition has been filed for the above stated relief.

3.Learned counsel for the petitioner would submit that now the petitioner is ready to pay any cost and also to cross examine the witnesses on the date fixed by this Court and pray for setting aside the order passed by the Trial Court in Crl.M.P.No.34 of 2016.

4.Resisting the same, the learned Additional Public Prosecutor would submit that the victim girl is a mentally challenged person and she was subjected to sexual assault. So, a case has been registered against the petitioner under Sections 9(k) r/w. 10 of Protection of Children from Sexual Offences Act, 2012. He further submitted that already P.W.1 to P.W.6 are examined but the petitioner has not cross examined the witnesses. He would also submit that even though Crl.M.P.No.28 of 2016 was allowed with conditions, the petitioner has complied with the first condition and he did not comply with the second condition that the petitioner shall cross examine the witnesses. Subsequently, he filed another petition for the same relief, which shows the malafide intention of the petitioner to drag on the proceedings. Hence, he prayed for dismissal of the petition.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.It is true that P.W.1 to P.W.6 were examined. According to the learned Additional Public Prosecutor, P.w.2/victim girl is a mentally challenged person and she appeared twice before the Court and even then, she was not cross examined by the petitioner. But, an opportunity must be given to the petitioner/accused to put forth his defence by cross examining the witnesses P.W.1, P.W.3 to P.W.6. In respect of P.W.2/victim girl is concerned, questionnaire is yet to be produced. P.W.2/victim girl is a minor and also a mentally challenged person and twice she appeared before the Trial Court. But even then, she was not cross examined by the petitioner. In such circumstances, this Court is declined to grant permission to cross examine P.W.2/victim girl. Hence, the order passed by the Trial Court in Crl.M.P.No.34 of 2016 in respect of recalling P.W.1, P.W.3 to P.W.6 alone is hereby set aside.

7.Accordingly, the Criminal Original Petition is partly allowed on condition that the petitioner shall pay a sum of 1,000/- (Rupees One Thousand only) to each witnesses, namely,

P.W.1, P.W.3 to P.W.6 on their appearance before the Trial Court. The learned Special Public Prosecutor is directed to produce the witnesses, P.W.1, P.W.3 to P.W.6 on 05.04.2016, since the matter was posted on that day. The petitioner is also directed to cross examine the witnesses, P.W.1, P.W.3 to P.W.6 on that day itself.

8.For reporting compliance, post the matter on 06.04.2016.

cse

31.03.2016

This matter having been listed under the Caption for "Reporting Complaine" 11.04.2016 in pursuant to the Order of this Court dated 31.03.2016 and made herein in the presence of the aforesaid counsels on either side, the Court made the following order:-

Today (11.04.2016), the respondent is present before this Court and he has given the explanation for non-production of witnesses, namely, P.W.1, P.W.3 to P.W.6 before the Trial Court on 05.04.2016. He would also submit that on 06.04.2016, all the witnesses, namely, P.W.1, P.W.3 to P.W.6 were produced before the Trial Court and they were cross-examined. He further submitted that arguments were completed and the case in Spl.S.C.No.4 of 2016 on the file of the Fast Track Mahila Court, Ariyalur is posted for judgment on 12.04.2016.

2.The submission made by the respondent is recorded. The connected miscellaneous petition is closed.

cse

11.04.2016

Sd/- जयते

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Kuvagam Police Station,
Ariyalur District.

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

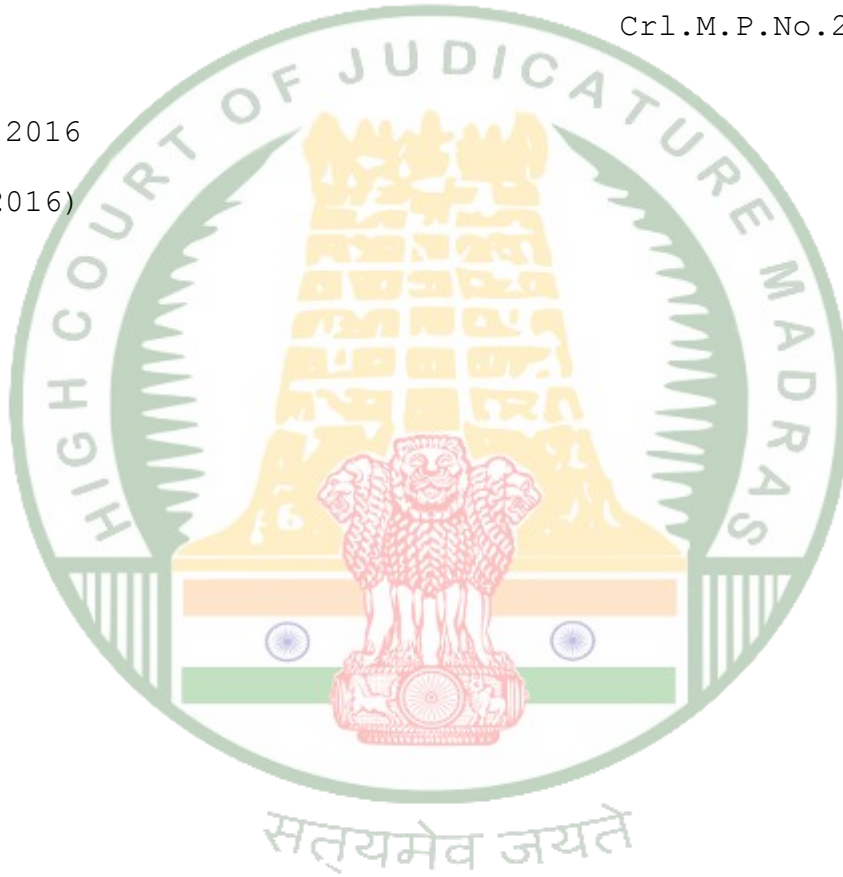
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Pugalenthil, Advocate, sr.5187

CrI.O.P.No.5349 of 2016
and
CrI.M.P.No.2755 of 2016

sns co
kra 01.04.2016

CA(21.04.2016)



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