

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Crl.OP.No.6366 of 2016

&

CRL.MP.No.3286 of 2016

Karunanidhi

...Petitioner

Vs.

The Assistant Commissioner of Police,
Sembium Range, Chennai.

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed by the learned Sessions Judge, Mahila Court, Chennai dismissing the petition filed by the petitioner under Section 311 of Cr.P.C. in Crl.MP.No.3929 of 2016, dated 16.03.2016 in S.C.No.210 of 2000 (on the file of the learned Sessions Judge, Mahila Court, Chennai) and direct the trial Court to recall P.W.3, Suresh Kumar and P.W.5, Rajan for the purpose of cross examination in S.C.No.210 of 2000 (on the file of the learned Sessions Judge, Mahila Court, Chennai).

For Petitioner : Mr.A.Raghunathan,
Senior Counsel for Mr.M.Rajavelu

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

Invoking the inherent jurisdiction conferred on this Court under Section 482 of Cr.P.C., this petition is filed by the petitioner, who is facing trial in Sessions case No.210 of 2000, to direct the trial Court to recall P.W.3, Suresh Kumar and P.W.5, Rajan for the purpose of cross examination in S.C.No.210 of 2000.

2. Heard Mr.A.Raghunathan, learned Senior Counsel appearing for Mr.M.Rajavelu for the petitioner and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent.

3. Mr.A.Raghunathan, learned Senior Counsel appearing for the petitioner has submitted that the petitioner was arraigned as A-1 and his mother was arrayed as A-2 in the criminal prosecution. After trial, the petitioner/A-1 was convicted for the offence under Sections 498 (A) and sentenced to undergo rigorous imprisonment for 2 years; convicted for the offence 304 (B) of I.P.C and sentenced to undergo rigorous imprisonment for a period of 10 years together with fine of Rs.20,000/-.

4. As regards the offence punishable under Section 4 of the Dowry Prohibition Act, even though the petitioner was found guilty of such offence, no separate punishment was imposed on him. The learned Senior Counsel appearing for the petitioner has further submitted that challenging the order of conviction and sentence recorded by the Sessions Court the petitioner had filed a Criminal Appeal in C.A. No.441 of 2003 before this Court. This Court, after hearing both sides, had passed a judgment dated 14.10.2015 holding that the trial Court had erroneously framed charge against the petitioner under Section 302 of I.P.C, but convicted him for an offence under Section 304 (B) of I.P.C. even without framing a charge under Section 304(B) of I.P.C. Therefore, this Court had set aside the conviction and sentence recorded against the petitioner under Section 304 (B) of I.P.C. and remitted back the case in S.C.No.210 of 2000 to the trial Court with a direction to dispose of the same afresh with a direction to frame a specific charge under Section 304 (B) of I.P.C., and to dispose of the case on merits and in accordance with law.

5. Mr.A.Raghunathan, learned Senior Counsel has further submitted that pursuant to the Judgment of this Court, re-trial was commenced in which PWs 1 and 2 were examined by the prosecution and they were cross-examined on 10.03.2016. Thereafter, without examining the other witnesses, the evidence was closed depriving the opportunity of the petitioner to cross-examine the prosecution witnesses. According to the learned Senior counsel for the petitioner, PW-3 was the uncle of the deceased and PW-5 was the father of the deceased. During the course of trial before the Sessions Court, they had deposed against the petitioner and therefore, they had to be cross-examined.

6. In this context, the petitioner has filed a petition under Section 311 of Cr.P.C. in CrI M.P.No.3929 of 2016 before the Sessions Court to recall P.W.3, Suresh Kumar and P.W.5,

Rajan. The trial Court, without considering to the prejudice that may be caused to the petitioner, if PW-3 and 5 are not recalled had dismissed the petition on 16.03.2016. Challenging the above said order, present revision petition has been filed.

7. Mr.C.Emalias, learned Additional Public Prosecutor has strongly objected to allow this petition saying that already PWs 3 and 5 were examined during the course of trial. Subsequent to the order passed by this Court, they were not examined afresh. In any event, during the re-trial PWs 1 and 2 were examined and cross-examined at length. When the sessions case was posted for questioning under Section 313 of Cr.P.C. the petitioner had filed the present petition to recall PWs 3 and 5. The trial Court, finding that the petition was filed only to drag on the trial proceeding, had rightly dismissed the petition and it needs no interference by this Court.

8. It is understood from the grounds of the petition that originally the petitioner had faced the trial for the offences under Sections 498(A) and 302 of I.P.C read with Sec.109 of IPC read with Sec.4 of The Dowry Prohibition Act along with his mother and his mother was acquitted from the charges, however, the petitioner was convicted for the offences under Sections 498-A of IPC, 304-B of IPC. Even though the petitioner was also found guilty of the offence punishable under Sec. 4 of Dowry Prohibition Act, no separate sentence was awarded against him. Challenging the order of conviction and sentence, the petitioner had filed a Criminal Appeal No.441 of 2003 before this Court. This Court, by a judgment dated 14.10.2015 had remanded the matter back to the trial Court to conduct retrial afresh by framing a specific charge under Section 304-B of IPC.

9. In this connection, Mr.A.Raghunathan, learned Senior Counsel has submitted that it was very essential for the petitioner to recall PW.3 and PW5 with reference to framing of charge under Section 304 (B) of I.P.C. Unless those witnesses were recalled, the petitioner would be deprived of a fair trial and therefore he has urged this Court to set aside the order of the trial Court passed in CrI M.P.No.3929 of 2016. During the course of argument he has made reference to the following decision of the Hon'ble Apex Court in P. Sanjeeva Rao Vs. the State of Andhra Pradesh, (2012) 7 Supreme Court Cases 56.

20. Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial, observed this Court in Hoffman Andreas Vs. Inspector of Customs, (2000) 10 SCC 430:2001 SCC (Cri) 1488. The following passage is in this regard apposite: (SCC p.432, para6)

"6....In such circumstances, if the new counsel thought to have the material witnesses further examined the court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible".

21.The extent and the scope of the power of the Court to recall witnesses was examined by this Court in Mohanlal Shamji Soni Vs. Union of India (1991) Supp(1) SCC 271:1991SCC(Cri) 595, wherein this Court observed:(SCC p.283, para.27)

'27.The Principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command and examination of any person which would depend on the facts and circumstances of each case."

24.In the result, we allow these appeals, set aside the orders passed by the trial court as also the High Court and direct that Prosecution Witnesses 1 and 2 shall be recalled by the trial Court and an opportunity to cross-examine the said witnesses afforded to the appellant. In fairness to the counsel for the appellant, we must record that he assured us that given an opportunity to examine the witnesses the needful shall be done on two dates of hearing, one each for each witness without causing any unnecessary delay or procrastination. The trial court shall endeavour to conclude the examination of the two witnesses expeditiously and without unnecessary delay. The parties shall appear the trial court on 06.08.2012."

10. This Court, in order to strike a balance on the submission made by the learned Senior Counsel and having regard to the related facts and circumstances, finds that in pursuant to the observation made by this Court in the judgment dated 14.10.2015 in Crl.A. No. 441 of 2003, while remitting the matter back to the trial court afresh, directed the trial court to provide an opportunity of hearing to the petitioner. According to the petitioner, during re-trial it is just and necessary to recall PWs 3 and 5 and the order refusing to recall those evidence would amount to denying an opportunity to him. Having regard to the above submission, this Court finds that the trial Court, instead of dismissing the petition to recall PWs 3 and 5, ought to have allowed it in compliance with principles of fair justice. On that ground, the order dated 16.03.2016 made in Crl M.P.No.3929 of 2016 in S.C.No.210 of 2000 passed by the trial Court is set aside and the petition in Crl.MP.No.3929 of 2016 is allowed. The trial Court is directed to permit the petitioner to recall PW.3 and PW5. Those witnesses shall be recalled and examined on 01.04.2016. The respondent is directed to produce PW3 and PW5 before the trial Court on 01.04.2016, on which date the trial court had adjourned the Sessions Case for further hearing.

11. With the above direction, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.
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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Sessions Judge, Mahila Court, Chennai.
2. -do- thro' The Principal Sessions Judge, Chennai.
- 3.The Assistant Commissioner of Police,
Sembium Range, Chennai.
4. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.M.Rajavelu, Advocate Sr 18432

KR/11/4/16

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