



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.10150 of 2016

M.Subramanian

... Petitioner/Petitioner/Accused

-vs-

State Represented by

The Deputy Superintendent of Police,

Kulithalai, Karur District. ... Respondent/Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order passed by the Lower court in Crl.M.P.No.821 of 2015 in S.C.No.7 of 2012 dated 29.03.2016 and permit the Petitioner to recall P.W.22 in order to prove that evidence of P.W.23 given before the Lower court is contra to her own statement given before the investigating officer.

For Petitioner : Ms.K.Priya

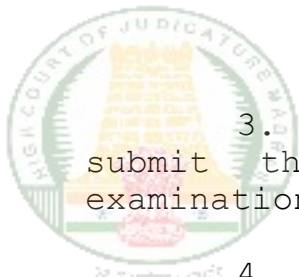
For Respondent : Mr.K.V.Rajaraman

Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed, seeking to set aside the order passed by the lower Court in Crl.M.P.No.821 of 2015 in S.C.No.7 of 2012 dated 29.03.2016, by which the petitioner's request for recalling P.W.22 was rejected. Challenging the same, the petitioner/accused is before this Court.

2. Learned counsel for the petitioner would submit that after examination of the Investigating Officer as P.W.22, P.W.23 / mother of the victim has been examined before the Court and in order to invite the attention of P.W.23 with regard to the contradictions in the statement recorded under Section 161 Cr.P.C., it is necessary to recall P.W.22 for further examination. However, the application filed by the petitioner/accused was dismissed by the Trial Court, holding that the petition has been filed only to drag on the proceedings. He has further submitted that though the purpose for which P.W.22 has to be recalled, has been explained before the Trial Court, the application for recall was dismissed by it.



3. Per contra, learned Government Advocate (Crl.Side) would submit that the investigating officer has been called for examination for three times and he should not be troubled for ever.

4. In reply to the above submission, learned counsel for the petitioner has contended that it was only at the instance of the Court, P.W.22 was called for examination and not at the instance of the accused.

5. Under such circumstances, when there are omissions and contradictions in the statement recorded under Section 161 Cr.P.C., the same has to be necessarily elicited from the examination of P.W.22 and the Court below should have considered the application filed for recalling P.W.22.

6. In the result, this petition is allowed. The order dated 29.03.2016 passed by the learned Principal Sessions Judge, Karur in Crl.M.P.No.821 of 2015 in S.C.No.7 of 2012, is set aside. The Trial Court is directed to recall P.W.22 for the petitioner/accused to cross examine him. It is made clear that as and when P.W.22 appears, the petitioner/accused shall cross examine him, failing which, his right to cross examine him will stand forfeited and the accused shall not seek for any adjournment. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Principal Sessions Judge,
Karur.
2. The Deputy Superintendent of Police,
Kulithalai,
Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.K.BALASUBRAMANI, ADVOCATE IN SR No. 34725

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TE/SK-SKN/ : 05/08/2016 : 2P/5C