



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P. (MD) No.8638 of 2016 and Cr1.M.P. (MD) 4199 of 2016

Martin Manrique Mansour

... Petitioner/Petitioner/Accused

-vs-

State represented by
The Inspector of Police,
Thirunagar Police Station,
Madurai.

(Crime No.173/2012)

... Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the learned Sessions Judge-Mahila Court, Mahalir Neethimandram, Madurai in Cr.M.P.No.507 of 2016 in S.C.No.109 of 2013 and set aside the order dated 27.05.2016.

For Petitioner : Mr.K.Veluchamy

For Respondent : Mr.K.Sundaravadivel
Special Public Prosecutor

O R D E R

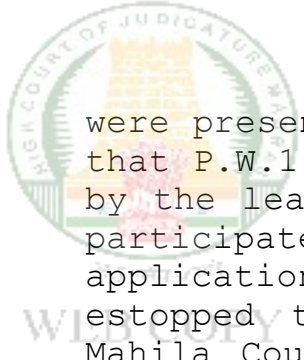
This petition has been filed, seeking to set aside the order dated 27.05.2016 made in Cr.M.P.No. 507 of 2016 in S.C.No.109 of 2013 by the learned Sessions Judge-Mahila Court, Mahalir Neethimandram, Madurai, in and by which, the petition filed by the State for recall of P.Ws.1 to 5, 7, 8, 23, 35 and 36, was allowed.

2. It is seen that in the order passed by the Court below, it is mentioned that the High Court has already granted liberty to the Special Public Prosecutor to thoroughly analyze the depositions of witnesses already examined and file a fresh application under Section 311 Cr.P.C., if warranted, by giving reasons as to how his further examination is essential to the just decision of the case.

2a. Pursuant thereto, a fresh petition under Section 311 Cr.P.C., has been filed and the witnesses have been permitted to be recalled on the ground that the Special Public Prosecutor has given reasons for recalling all those witnesses.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Based on the impugned order dated 27.05.2016, it is represented by the Special Public Prosecutor that four witnesses



were present on 04.06.2016 and P.Ws.1, 3 , 4 & 5 were examined and that P.W.1 was cross examined by the accused also. It is contended by the learned Special Public Prosecutor that the accused, having participated in the cross examination of P.W.1 and having filed an application to defer the examination of P.Ws.1, 3, 4 & 5, is estopped to question the validity of the order passed by the Mahila Court and it is not open to the accused to challenge the same.

4. Per contra, learned counsel for the accused has submitted that once the witnesses have turned hostile, no opportunity should be given for the prosecution to further examine the witnesses, as it would affect the trial of the case. This contention cannot be accepted in the light of the judgment of the Hon'ble Supreme Court in the case of Zahira Habibulla Sheikh vs. State of Gujarat, reported in [2004 (4) SCC 158] (commonly known to the public as "Best Bakery Case."). Moreover, this objection ought to have taken, before the passing of the order, permitting recalling of witnesses.

In view of the above stated facts, there is no merits in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To:

1. The Sessions Judge-Mahila Court,
Mahalir Neethimandram,
Madurai.
2. The Inspector of Police,
Thirunagar Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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