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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P.(MD) No.8761 of 2016

and

Cr1.M.P.(MD).No.4270 of 2016

L.Muthuramalingam

...Petitioner

-vs-

The State through
The Inspector of Police,
Anna Nagar Police Station,
Madurai.

(Crime No.48/2013)

...Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order in Cr.M.P.No.535 of 2016 dated 10.05.2016 in S.C.No.327 of 2013 passed by the learned Mahila Court, Madurai.

For Petitioner : Mr.K.Baalasundharam

For Respondent : Mr.A.P.Balasubramani

Govt. Advocate (Cr1.Side)

O R D E R

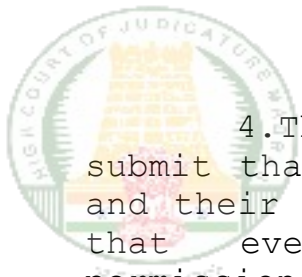
This petition has been filed, seeking to set aside the order passed in Cr.M.P.No.535 of 2016 in S.C.No.327 of 2013, dated 10.05.2016, by the Mahila Court, Madurai, by which the petition to recall was allowed in respect of P.Ws.9 and 10 and dismissed in respect of P.Ws.1, 3, 6 and 7.

2.The learned counsel for the petitioner challenged the order of dismissal on the following grounds:

(a)When the accused is facing grave charge of rape under Section 376 I.P.C., the Court should have been liberal in allowing the application to recall the witnesses, especially witness Nos.1 and 3.

(b)The interest of the accused will be greatly prejudiced, if the application to recall is not allowed in full.

3.The learned Government Advocate appearing for the respondent would submit that the intention of the accused is only to drag on the proceedings and that in the event of the Court decides to grant the relief, it may be considered only in respect of essential witnesses and also by imposing appropriate and



4.The learned counsel for the petitioner / accused would submit that the defence itself has not been put to the witnesses and their response is yet to be elicited. He would further submit that even if PWs.6 and 7 are not permitted to be recalled, permission may be granted to recall at least PW1 and PW3.

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5.PW1 is stated to be the mother of the victim girl and PW3 is victim herself. When it is alleged that the defence itself has not been suggested to the prosecution witnesses, it is just and necessary that they must be permitted to be recalled, but the conveyance of PW1 and PW3 cannot be sacrificed.

6.In the result, this Criminal Original Petition is partly allowed and the order of the Sessions Court, dated 10.05.2016, in Cr.M.P.No.535 of 2016 in S.C.No.327 of 2013, declining permission to cross-examine PW1 and PW3 alone is set aside and in respect of other witnesses, the order of the Court below shall stands confirmed. PW1 and PW3 are directed to be recalled subject to the accused paying a sum of Rs.250/- to each of them as cost. The undertaking given by the prosecution that they will serve summons on PWs.1 and 3 for their presence on 24.06.2016 is recorded. Either on 24.06.2016 or on the next adjourned date, the accused shall not seek any adjournment. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS)

To:

1. The Mahila Judge, Madurai
2. The Inspector of Police,
Anna Nagar Police Station, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.K.Baalasundharam, Advocate in SR.30489

Cr1.O.P.(MD) No.8761 of 2016
13.06.2016

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PBK/GSV-PM/SAR-II 16/06/2016 ::2P-5C:: (IT)