



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRL.RC(MD)No.463 of 2016

and

C.M.P(MD)No.5346 of 2016

Selvakumar

... Petitioner/Accused

-vs-

State through Inspector of Police,
M.Kallupatti Police Station,
Crime No.27/07,
Madurai District.

... Respondent/Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to set aside the docket order in S.C.No.195 of 2010 by closing the evidence with chief examination of P.Ws.1 to 3, allow Cr.M.P.No.716 of 2016 filed on 03.06.2016 before the learned Judge, give an opportunity to complete the cross-examination of P.W.1 and to cross-examine P.Ws.2 and 3.

For Petitioner: Mr.C.Ramachandran

For Respondent: Mrs.S.Prabha

Government Advocate (Criminal Side)

ORDER

The revision petitioner aggrieved by the docket order, dated 03.06.2016 of the learned Additional Sessions Judge, Mahalir Court, Madurai depriving his opportunity to cross-examine certain prosecution witnesses has directed this revision.

2. The revision petitioner is being prosecuted for offences under Sections 498-A, 304-B I.P.C and under Section 4 of Dowry Prohibition Act in the said Court in S.C.No.195 of 2010. Trial started. P.Ws.1 to 3 were examined in chief, but were not cross-examined. On the petition of the accused, their cross-examination was deferred. Subsequently, P.W.1 was cross-examined in part. P.Ws.2 and 3 were not cross-examined.



3. The case came up on 03.06.2016 before the Trial Court P.Ws.1 to 3 were present. However, the learned defence counsel was not present. In the circumstances, a petition under Section 309 Cr.P.C has been filed by the accused to adjourn the case.

4. On 03.06.2016, Trial Court dismissing the adjournment petition, passed the following docket order:-

"Accused present. P.W.1 to P.W.3 present. This case recalled witnesses. Accused Advocate not present. Cr.M.P.309 petition was filed and dismissed. This case is for 5 years. Accused side not ready to cross the P.W.1 to P.W.3. This Court presumed that there is no cross on the side of the accused. Hence P.W.1 to P.W.3 evidence was closed with chief evidence. Issue summons to witness by 08.06.2016".

5. The learned counsel for the petitioner submits that the right of defence is a matter of constitutional right. He cannot be presumed to have given it. In this circumstances, the defence of the accused is at peril. An opportunity may be given to him. The accused is interested in defending himself. He is not interested in protracting the trial.

6. On the other hand, the learned Government Advocate (Criminal Side) submitted that when the witnesses were present on the re-call petition of the accused, the accused should have cross-examined the witnesses, but he did not do so. He should be blamed for his folly.

7. I have considered the rival submissions and perused the docket order, dated 03.06.2016 and also the materials on record.

8. It is seen that there was no allegation as against the petitioner that he is delaying the trial of the case. As rightly submitted by the learned counsel for the petitioner, right of the accused, in other words, defence of the accused, cannot be a matter of presumption.

9. In the facts and circumstances, this Court is of the view that an opportunity can be given to the accused. However, on the date when the witnesses are summoned, if the accused does not avail of this opportunity, thereafter, no opportunity to him.

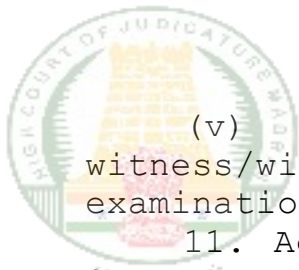
10. In the circumstances, ordered as under:-

(i) The docket order, dated 03.06.2016 passed in S.C.No.195 of 2010 by the learned Additional Sessions Judge, Mahalir Court, Madurai is set aside.

(ii) The trial Court will re-call P.Ws.1 to 3 for the cross-examination of the accused.

(iii) The witness batta for P.Ws.1 to 3 comprising to and fro expenses and reasonable daily allowance, if not already deposited, shall be deposited.

(iv) The dates on which re-calling of the witnesses shall be determined, after giving opportunity to the defence counsel and



(v) It is made clear that on the date of the witness/witnesses is/are present, postponement of cross-examination of witness shall not be permitted.

11. Accordingly, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Additional Sessions Judge,
Mahila Court, Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Inspector of Police,
M.Kallupatti Police Station,
Madurai District.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.
(For watching return the lower court record)

+1cc to Mr.C.Ramachandran,Advocate, SR NO: 37083

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JA-AAL-MPA-21.7.2016/3P:6C

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