

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

Crl.O.P.No.2473 of 2017

and Crl.MP.No.1737 of 2017

Selvam

...Petitioner

-vs-

State by

The Inspector of Police
Velagoundampatti Police Station,
Velagoundampatti,
Namakkal District.

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the entire records insofar as relates to the order dated 04.11.2016 passed in Crl.M.P.No.504 of 2016 in Special C.C.No.11 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal, Namakkal District and to set aside the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.C.Emalias

Additional Public Prosecutor

O R D E R

The petitioner has filed this petition to set aside the order passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, on 04.11.2016 in Crl.M.P.No.504 of 2016 in Special C.C.No.11 of 2015.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The petitioner is an accused in Crime No.122 of 2016 on the file of the respondent police for the offences punishable under Sections 354, 506(i) IPC, Section 4 r/w 2(a) of Tamil Nadu (Prohibition of Harassment) of Women Act 1998, Section 376(2)(f) IPC and Section 10 r/w 9 (n) and 6 r/w 5(n) of POCSO Act 2012. According to the petitioner, he filed a revision petition before this Court in Crl.R.C.No.270 of 2016 against the order of

dismissal of discharge petition filed before the trial Court. It is also stated that P.W.1 to P.W.4 were examined in chief before the trial Court, but they were not cross-examined by the petitioner. The trial has been proceeded with. Hence, he filed a petition in Crl.M.P.No.504 of 2016 before the learned Sessions Judge, Fast Track Mahila Court, Namakkal, to recall P.W.1 to P.W.4, for cross-examination. The petitioner/accused sought adjournments before the trial Court, on the premise that revision petition is pending before this Court. The said petition in Crl.M.P.No.504 of 2016 was dismissed, on the ground that various adjournments were taken by the accused/petitioner and that the petitioner has not utilised the opportunities given to him to cross-examine the prosecution witnesses. Even the counter filed by the petitioner was strongly objected to by the prosecution side as non-sustainable before the trial Court. Challenging the said order of dismissal to recall P.W.1 to P.W.2, the petitioner is before this Court in the present Criminal Original Petition.

4. It is contended by the petitioner that he has been falsely implicated in this case, and to prove his defence that he is innocent, it is essential to cross-examine P.W.1 to P.W.4, and therefore, he prayed before this Court to set aside the order dated 04.11.2016 passed by the learned Sessions Judge, Fast Track, Mahila Court, Namakkal, in Crl.M.P.No.504 of 2016 in Spl.CC.No.11 of 2015.

5. It is submitted by the learned Additional Public Prosecutor that no stay was granted to the petitioner in the revision petition and the petitioner also failed to mention the number of the revision petition before the trial Court. Hence, the statement made by the petitioner that revision petition pending before the High Court was not considered and therefore, the petition to recall P.W.1 to P.W.4 was dismissed by the trial Court, cannot stand.

6. Upon hearing the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor, this Court is of the view that the reason adduced in the order passed by the learned Sessions Judge, Fast Track, Mahila Court, Namakkal, dated 04.11.2016 in Crl.M.P.No.504 of 2016 in Spl.CC.No.11 of 2015, does not meet out the required parameters for consideration under Section 311 Cr.P.C. It is the specific claim of the petitioner that the revision petition earlier filed before this Court against the order of dismissal of discharge petition was pending. It is also contended by the petitioner that P.W.1 to P.W.4 have to be cross-examined to prove his case. Without considering all these factors, the trial Court dismissed the petition filed under Section 311 Cr.P.C., which is nothing but non-application of mind.

7. In view of the reasons stated above, the impugned order is liable to be set aside and accordingly set aside. The matter is remitted to the trial Court for providing opportunity to the parties concerned for cross-examination of P.W.1 to P.W.4. Such cross-examination shall take place on 19.06.2017 and 20.06.2017.

8. The Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To:

1.The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

2.The Inspector of Police
Velagoundampatti Police Station,
Velagoundampatti,
Namakkal District.

+1 cc to Mr.C.Prakasam,advocate,sr.21201.

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krd 26/4

Crl.O.P.No.2473 of 2017

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