

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.No.29093 of 2017
and
Crl.M.P.No.16429 of 2017

Kandasamy ... Petitioner

Vs

State of Tamil Nadu
rep. by the Inspector of Police,
P.Vellur Police
Station. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to Set aside the order dated 08.12.2017 made in Crl.M.P.No.652 of 2017 in S.C.No.38 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Judge, Namakkal.

For Petitioner : Mr.K.S.Karthik Raja
For Respondent : Mr.C.Iyyapparaj
Addl. Public Prosecutor

O R D E R

This Criminal Original Petition has been filed against the dismissal of the petitioner's application filed under Section 311 Cr.P.C., by the Court below.

2. The petitioner is accused in S.C.No.38 of 2014 for the offence under Section 376 r/w 511 IPC on the file of the learned Sessions, Fast Track Mahila Judge, Namakkal.

3. According to the petitioner, during trial, the petitioner examined all the witnesses and not cross examined the investigating officer, namely, P.W.16. On 03.11.2017, the matter was posted for cross examination of P.W.16, on that date, the learned counsel for the petitioner as well as the petitioner were not present on the ground that they were not well and able to cross examine the investigating officer on that day. The trial Court closed the evidence and posted the matter for argument. Thereafter, the petitioner filed a petition under Section 311 Cr.P.C. to recall the witness and the same was

dismissed by the trial Court on 08.12.2017 on the ground that the petitioner has not given correct reason for his absence. Challenging the said order, the present criminal petition is filed.

4. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent.

5. Since the petitioner has examined all the witnesses except P.W.16, the Investigating Officer, due to unavoidable circumstances, he was not able to cross examine the investigating officer, in order to give an opportunity to defend his case, it is necessary an opportunity should be given to the petitioner. In the above circumstances, the order passed in CrI.M.P.No.652 of 2017 in S.C.No.38 of 2017, dated 08.12.2017 on the file of the Sessions Fast Track Mahila Court is set aside and the trial Court is directed to recall P.W.16 on 08.01.2018 and on that day, the petitioner is directed to cross examine P.W.16 without fail. It is made clear that if the petitioner fails to cross examine the P.W.16 on that day, no further opportunity will be given. Consequently, connected M.P. is closed.

6. With the above direction, the criminal original petition is disposed of.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Fast Track Mahila Court, Namakkal.
 - 2.The Inspector of Police, P.Vellur Police Station,
Namakkal District.
 - 3.The Public Prosecutor, High Court, Madras.
- + 1 cc to MR. K.S. Karthik Raja, Advocate Sr.92171

CrI.O.P.No.29093 of 2017

(CS-VII)
EU(05/02/2018)