



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASHCrl.O.P.(MD) No.334 of 2017
& Crl.M.P.(MD) No.311 of 2017

1. Kamal
2. Nagoor
3. Muthalippu
4. Jameela
5. Pappa

... Petitioners/A1,A3 to A6

-vs-

1. State rep. by its
The Inspector of Police,
Karimedu Police Station,
Madurai District.
(Crime No.1202 of 2007)

... 1st Respondent/Complainant

2. Nabisa Begum ... 2nd Respondent/Defacto Complainant
(**R2 impleaded vide order dated 08.03.2017**
as made in Crl.MP(MD)No.1053/2017 in
Crl.O.P.(MD) No.334 of 2017)

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records and set aside the order passed in Cr.M.P.No.1403 of 2016 dated 22.11.2016 on the file of the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram) Madurai in S.c.No.386/2010 on the file of the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram), Madurai.

For Petitioners	:	Mr.G.Karuppasamy Pandian
For R1	:	Mr.K.Anbarasan
		Govt. Advocate (Crl.Side)
For R2	:	Mr.E.Somasundaram

ORDER

This petition has been filed to call for the records and set aside the order passed in Cr.M.P.No.1403 of 2016 dated 22.11.2016 on the file of the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram) Madurai in S.C.No.386 of 2010 on the file of the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram), Madurai.



2. Pursuant to the suicide of Sabitha Banu on 27.06.2007, the respondent police registered a case in Crime No.1202 of 2007 and after completing the investigation filed a final report and the same is now pending in S.C.No.386 of 2010 on the file of the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram) Madurai for an offence under Section 306 IPC against the petitioners herein.

3. Trial in the case commenced with the examination of P.W.1 on 03.02.2015 and though the prosecution has examined 13 witnesses, the accused did not choose to cross examine them for reasons best known to them. Thereafter, the accused filed an application in Cr.M.P.No.1403 of 2016 in S.C.No.386 of 2010 under Section 311 Cr.P.C. for recalling P.Ws.1 to 13, which was dismissed by the Trial Court on 22.11.2016, aggrieved by which, the accused are before this Court.

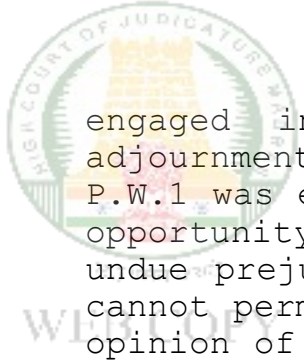
4. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.Side) appearing for the State and the learned counsel for R2. Mr.R.Murugesan, Sub-Inspector of Police, Karimedu Police Station is present.

5. Learned counsel for the accused submitted that P.Ws.1 & 2 were examined in chief for very long period and since the counsel for the accused was engaged in another Court, he had failed to cross examine the witnesses and if one more opportunity is given to the accused to cross examine the witnesses, the would cross examine them. He further submitted that in a case of such graver charge, if the opportunity is denied, undue prejudice will be caused to the accused.

6. Per contra, learned Government Advocate (Crl.Side) submitted that the case is pending from 2010 onwards and only to drag on the proceedings, the accused are adopting dilatory tactics.

7. This Court gave its anxious consideration to the rival submissions made on either side.

8. It is seen that trial in the case began on 03.02.2015 and the prosecution witnesses were examined on various dates. The Hon'ble Supreme Court in the case of **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542** has held that witnesses should be cross examined on the date of their examination in chief and there should not be any adjournment. Pursuant to the Supreme Court's verdict, the Registrar General of this Court has circulated the said judgment to all the Presiding Officers on the direction of the Supreme Court. Therefore, this Court does not find any serious infirmity in the order dated 22.11.2016 passed by the learned District and Sessions Court (Mahila), (Mahalir Neethi Mandram) Madurai in Cr.M.P.No.1403 of 2016. Under Section 309(2) Cr.P.C., it is clearly stated that just because the pleader of a party is



engaged in another Court, that shall not be a ground for adjournment. This Court finds that Trial had begun on 03.02.2015 and P.W.1 was examined on two dates. In the case of this nature, if the opportunity to cross examine the witnesses is denied to the accused, undue prejudice will be caused to the accused. However, this Court cannot permit the recall of all the witnesses and in the considered opinion of this Court, it would serve the interest of justice, if a direction is issued to the Trial Court to recall P.W.1 (T.Kadar), P.W.2 (Diwan Thasthakeer), P.W.11 (Sub-Inspector of Police), P.W.12 (RDO) and P.W.13 (Murugesan, S.I. of Police) on terms and the witnesses shall be summoned on the date fixed by the Trial Court. On the appearance of the witnesses, the petitioners shall pay a sum of Rs.1,000/- each as costs each to P.Ws.1, 2 and 12. Before witnesses are put into the witness box, they must be permitted to refresh their memory by making them read the chief examination and only thereafter, they can be cross examined. Boycott of Courts shall not be a reason for not cross examining the witnesses, when they appear. On the appearance of the witnesses, if the accused fail to cross examine them, they will forfeit their rights to further recall the witnesses.

9. With the above direction, this petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To:

1. The District and Sessions Judge (Mahila),
(Mahalir Neethi Mandram), Madurai.
2. The Inspector of Police,
Karimedu Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.A.K.AZAGARSAMI, ADVOCATE IN SR No. 15611

+ 1 CC TO Mr.E.SOMASUNDARAM, ADVOCATE IN SR No. 15492

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TE/SKN-RSK : 10/04/2017 : 3P/6C