



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.04.2017
CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.3617 of 2017

Anbu @ Anburaj @ Anburajan : Petitioner

Vs.

State rep. by
The Inspector of Police,
Kumbakonam All Women Police Station,
Thanjavur District.
(in Crime No.1 of 2011). : Respondent

Prayer:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in CrI.M.P.No.137 of 2017 dated 06.03.2017 in S.C.No.115 of 2011 on the file of the Mahalir Court (Fast Mahila Court), Thanjavur, and set aside the order and consequently, direct the Trial Court to permit the petitioner to recall P.W.1, P.W.7, P.W.8, P.W.9 and P.W.10.

For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

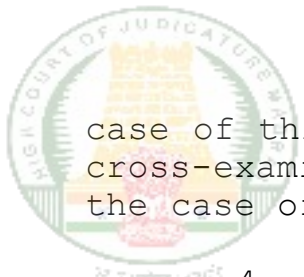
ORDER

The petitioner is facing trial in S.C.No.115 of 2011 for offences under Sections 376, 417 of the Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Trial in the case began with the examination of the victim girl as P.W.1 on 10.07.2012. After the victim girl was examined in chief, admittedly, she was subjected to cross-examination by the accused. Thereafter, the prosecution examined P.W.7, P.W.8, P.W.9 and P.W.10 on 30.01.2017, 02.02.2017 and 06.02.2017, but, they were not cross-examined by the accused for reasons best known to him. Thereafter, the accused filed an application in CrI.M.P.No.137 of 2017 in S.C.No.115 of 2011 under Section 311 of the Code of Criminal Procedure, which has been dismissed by the Trial Court on 06.03.2017, challenging which, the accused is before this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The learned counsel for the accused submitted that in a



case of this nature, if opportunity is not given to the accused to cross-examine the witnesses, undue prejudice will be caused to the case of the accused.

4. Per contra, the learned Government Advocate (Criminal side) strongly refuted the contention.

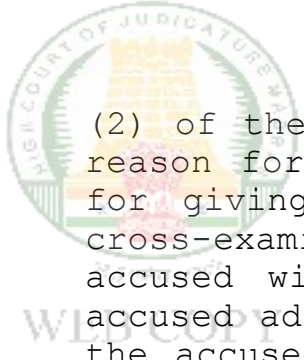
5. This Court gave its anxious consideration to the rival submissions.

6. This is a rape case, in which, the charge sheet was filed way back in the year 2011. The victim girl was examined in chief on 10.07.2012 and she has been cross-examined by the accused on that day. Thereafter, the accused cannot have any grievance that the victim girl was not cross-examined at all. From 2011 to 2017, this case has been dragging on account of the conduct of the accused. Now, in the year 2017, the accused has filed the present application under Section 311 of the Code of Criminal Procedure to recall P.W.1, P.W.7, P.W.8, P.W.9 and P.W.10.

7. On a reading of the petition, the accused has stated that since his advocate was physically indisposed, the witnesses were not cross-examined. It is seen that P.W.1 was examined on 10.07.2012, P.W.7 and P.W.8 were examined on 30.01.2017, P.W.9 was examined on 02.02.2017 and P.W.10 was examined on 06.02.2017. Thus, it is seen that all the witnesses were not examined on the same day and, therefore, the contention of the accused that his advocate was physically indisposed on all these dates does not merit acceptance. That apart, a rape victim cannot be made to come again and again to the Court and give evidence as to how she had suffered the ignominy. It will only add salt to injury. Therefore, the accused has not made out any good grounds for recalling all the witnesses and this Court does not find any serious infirmity in the order passed by the Trial Court warranting interference.

8. It is seen that P.W.9 and P.W.10 are doctors and their precious time cannot be wasted again and again by recalling them as their presence in the Government Hospital to take care of the needs of patients is essential. However, this Court is of the view that it will serve the interest of justice, if P.W.7 and P.W.8 are recalled for the purpose of cross-examination on certain terms.

9. Accordingly, the Trial Court is directed to recall P.W.7 and P.W.8 on a date fixed by the Trial Court and on their appearance, they shall be paid Rs.1,000/- (Rupees One Thousand only) each as cost by the accused. The Court shall furnish them their evidence in chief for them to refresh their memory and permit the accused to cross-examine them. If they turn hostile, the Trial Court can proceed to appreciate their evidence based on their examination in chief, in the light of Section 154



(2) of the Indian Evidence Act. Boycott of Court shall not be a reason for not cross-examining P.W.7 and P.W.8, when they appear for giving evidence. If the accused, for any reason, fails to cross-examine P.W.7 and P.W.8, on the day of their appearance, the accused will forfeit his right to cross-examine them. If the accused adopts any dilatory tactics, the Trial Court shall remand the accused to custody, in the light of the law laid down by the Supreme Court in **State of U.P. vs. Shambhu Nath Singh** reported in **2001(4) SCC 667**.

10. With the above direction, this Criminal Original Petition is ordered accordingly.

Sd/-

Assistant Registrar(C)

/True copy/

Sub Assistant Registrar

To

1.The Presiding Judge,
The Mahalir Court (Fast Mahila Court),
Thanjavur.

2.The Inspector of Police,
Kumbakonam All Women Police Station,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.A.Arun Prasad , Advocate in SR.No. 19149

SML

AE/RR/19.04.2017/3P/5C

Order made in
CRL.O.P. (MD) No.3617 of 2017

Dated:-
04.04.2017