



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.3999 of 2017

Muthupandi

... Petitioner/Petitioner/A2

Vs.

The State Rep. by its,
The Inspector of Police,
Palamedu Police Station,
Madurai District.

(Crime No.102 of 2000)

... Respondent/Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 24.02.2017 made in Crl.M.P.No.1565 of 2016 in S.C.No.62 of 2008 on the file of the learned District and Sessions Court (Mahalir Neethimandram), Madurai.

For Petitioner : Mr.M.Jegadeesh Pandian

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

O R D E R

The petitioner is facing trial in S.C.No.62 of 2008 for offences under Sections 366, 376 and 417 of the Indian Penal Code r/w Section 34 of the Indian Penal Code. The petitioner, who is the second accused, filed Cr.M.P.No.1565 of 2016 in S.C.No.62 of 2008 under Section 311 of the Code of Criminal Procedure for recalling P.W.1 to P.W.7, which was dismissed by the Trial Court on 24.02.2017, challenging which, the second accused is before this Court.

2. Heard Mr.M.Jegadeesh Pandian, learned counsel for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate (Criminal Side) appearing for the respondent. Today, Mr.S.Jegatheeswaran, Special Sub-Inspector of Police, Alanganallur Police Station, is present.

<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the petitioner submitted that the accused had not cross-examined P.W.1 to P.W.7 and, therefore,



one opportunity should be given to cross-examine them, otherwise, undue prejudice will be caused to the case of the accused.

4. The learned Government Advocate (Criminal side) refuted the said contention.

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

6. It is true that the accused should be given a fair opportunity to cross-examine the prosecution witnesses, especially, in a case of this nature, where the accused are facing trial for a grave offence under Section 376 of the Indian Penal Code.

7. In this case, the following witnesses were examined in chief on the dates given below:

P.W.1 to P.W.3	- 22.11.2011
P.W.4 and P.W.5	- 23.11.2011
P.W.6	- 24.11.2011
P.W.7	- 25.11.2011

8. On all these dates, the accused did not choose to cross-examine the witnesses. The accused absconded and Non-Bailable Warrant was issued against them. They were apprehended by the police and brought to trial. At this juncture, they filed an application under Section 311 Cr.P.C. in the year 2014 for recalling P.W.1 to P.W.7, which was allowed by the Trial Court on condition that they should pay cost. The accused did not pay the cost, but, the counsel for the accused filed a memo stating that the accused were not co-operating with them. The accused once again absconded and the warrants were recalled in respect of the first accused. The second accused has been arrested and is in custody now. In **A.G. vs. Shivakumar Yadav, 2015 (9) Scale 649**, the Hon'ble Supreme Court has held that just because, the accused is in jail that cannot be a good reason for recall of witnesses.

9. Therefore, on account of the supine indifference of the accused, the prosecution witnesses were not cross-examined from 2011 to 2017. This Court does not know where those witnesses are now. It will be a travesty of justice, if the two victims are once again recalled, at this distant point of time, to speak about how they suffered rape. It will result in psychological trauma, if the two women are once again recalled at the whims and fancies of the accused and made to explain to the Court how they were raped. Therefore, this court does not find any infirmity in the order passed by the Court below. In fact this Court has dismissed the similar plea of A1 in CrI.O.P.(MD) No.3133 of 2017 on 22.03.2017 and hence, there cannot be a different yardstick for



10. In the result, this Criminal Original Petition stands dismissed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To:

1. The Sessions Judge,
Mahalir Neethimandram,
Madurai.
2. The Inspector of Police,
Palamedu Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MAS/MR/SAR3:19.04.2017:3P-4C

Crl.O.P. (MD) No.3999 of 2017
06.04.2017