



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

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Crl.O.P. (MD) Nos.5109 & 5110 of 2017

Muthukumar

: Petitioner

in both Crl.O.Ps.,

-Vs-

State Rep. By
The Inspector of Police,
All Women Police Station,
Pattukottai,
Thanjavur District
(Crime No.5 of 2010)

: Respondents

in both Crl.O.Ps.

PRAYER in both Crl.O.Ps.: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and set aside the order dated 19.01.2017 and 13.03.2017 passed in Cr.M.P.No.26 of 2017 and Cr.M.P(MD)No.169 of 2017 in S.C.No.60 of 2014 on the file of the Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.A.P.Balasubramani,

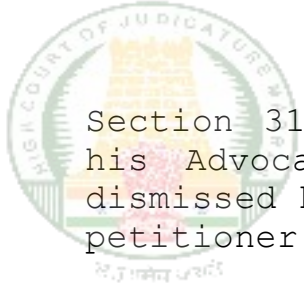
Government Advocate (Crl.side)

C O M M O N O R D E R

The petitioner, who is the sole accused, is facing prosecution in S.C.No.60 of 2014 before the Mahila Court, Thanjavur for the offences under Sections 417, 450 and 376 of IPC. The charges were framed against the petitioner and the trial began with the examination of Valli (P.W.1) on 23.09.2015. Valli (P.W.1) was cross-examined by the petitioner. The prosecution examined Umamaheswari (P.W.2), the prosecutrix, on 14.10.2015. But for the reasons best known to the accused, he did not cross-examine her. Similarly, the other prosecution witnesses were examined namely P.W.3 Nadimuthu on 30.08.2016; Vaithiyalingam (P.W.4) on 14.09.2016; Rajendran (P.W.5) on 14.09.2016; Varalakshmi (P.W.6) on 14.09.2016; C.Rajendran (P.W.7) on 14.09.2016; Vijayalakshmi (P.W.8) on 23.09.2016; Prema (P.W.9) on 29.09.2016; Dr.Velavan (P.W.10) on 14.10.2016; Anburani (P.W.11) on 25.10.2016; Shengamalakannan (P.W.12) on 23.12.2016. All the witnesses were not examined in cross by the petitioner/accused.

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

2. Thereafter, the petitioner filed Cr.M.P.No.26 of 2017 under



Section 311 Cr.P.C., to recall the witnesses on the ground that his Advocate was physically indisposed. The said petition was dismissed by the Trial Court on 19.01.2017. Challenging which, the petitioner has filed Crl.O.P(MD)No.5109 of 2017.

3. After the dismissal of Cr.M.P.No.26 of 2017, the petitioner once again filed Cr.M.P.No.169 of 2017 under Section 311 Cr.P.C., to recall some witnesses for cross-examination on different grounds. Cr.M.P.No.169 of 2017 was also dismissed by the trial Court on 13.03.2017. Challenging which, the petitioner has filed Crl.O.P(MD)No.5110 of 2017.

4. Heard Mr.A.Thiruvadikumar, learned counsel for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate (Criminal side) appearing for the respondent.

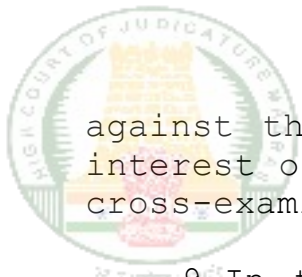
5. Mr.A.Thiruvadikumar, learned counsel for the petitioner submitted that the petitioner is facing very serious charge of rape and therefore, interest of justice requires that the trial Court should have allowed the applications filed by the petitioner under Section 311 of Cr.P.C.,

6. Per contra, the learned Government Advocate (Crl.side) refuted the contention.

7. This Court has given its anxious consideration to the rival submissions. It is seen that the victim girl P.W.2 was examined in chief as early as on 14.10.2015. Admittedly, the victim girl suffers from speech retardation. From 2015 to 2017, the accused did not chose to cross-examine the victim girl. Thereafter, the accused filed Cr.M.P.No.26 of 2017, which was dismissed by the trial Court on 19.01.2017. Again the petitioner filed Cr.M.P.No.169 of 2017, which was dismissed on 13.03.2017. It is not known as to how the second petition namely Cr.M.P.No.169 of 2017 is maintainable before the trial Court, when the authority/trial Judge has dismissed the Cr.M.P.No.26 of 2017 as regard the reasons given in the petitions for recall. This Court is of the view that when the witnesses goes to the Court for giving evidence there cannot be adjournment even if the Advocate is engaged in any other Court. This is very clear from the Proviso to Section 309 Cr.P.C., That apart in **Vinod Kumar v. State of Punjab** reported in (2015) 3 SCC 220, Supreme Court has given a direction that the prosecution witnesses should be examined in cross on the day they are examined in chief. That apart, a victim of rape cannot be made to come to the Court and narrate the way she was subjected to rape, every time at the request of the accused. This will create a psychological trauma for the victim girl.

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8. However, taking into consideration the grave allegations



against the petitioner, this Court is of view it will be in the interest of justice, if permission is granted to the petitioner to cross-examine P.W.3 Nadimuthu on terms.

9. In the result, Crl.O.P(MD)No.5110 of 2017 is dismissed and the order passed by the Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur in Cr.M.P.No.169 of 2017, dated 13.03.2017 is confirmed.

10. As regards in Crl.O.P(MD)No.5109 of 2017, this Court directs the Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur to recall P.W.3 Nadimuthu on a day convenient, on his appearance, the petitioner shall pay a sum of Rs.1,000/-. The learned Public Prosecutor in-charge of the case and the trial Judge shall furnish the deposition in chief of Nadimuthu (P.W.3) for him to refresh his memory and only thereafter, he can be subjected to cross-examine by the accused. If on the date, when the P.W.3 appears, the accused fails to cross-examine, even if it is boycott of Court, the accused will forfeit his rights.

11. With the above direction, this petition in Crl.O.P(MD) No.5109 of 2017 is ordered accordingly. As regards, recalling the other witnesses, the request is rejected. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Sessins Judge,
The Mahalir Neethimandram (Fast Track Mahila Court),
Thanjavur.

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

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

+1cc to Mr.A.THIRUVADI KUMAR Advocate in SR. No.54158

AM/TSG

JS/SKN.RSK/SAR.3/28.06.2017/3P-5C