



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.06.2017
CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.7133 of 2017

K.Kodiyarasu : Petitioner/Petitioner

-Vs-

State represented by
The Inspector of Police,
Karur Town Police Station,
Karur, Karur District.
(Crime No.582 of 2012) : Respondent/Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order passed by the learned Mahila Fast Track Court, Karur in Cr.M.P.No.16 of 2017, dated 21.04.2017 and direct the learned Judicial Magistrate No.I, Karur to recall the witness P.W.1 to P.W.8 for cross examination in C.C.No.247 of 2012 on the file of the learned Judicial Magistrate No.I, Karur.

For Petitioner : Mr.R.Mathiyalagan

For Respondent : Mr.K.Anbarasan
Government Advocate (Crl.Side)

O R D E R

The petitioner is facing prosecution in C.C.No.247 of 2012 before the learned Judicial Magistrate No.I, Karur for the offences under Sections 279 and 337 I.P.C., altered to 304(A) I.P.C. The petitioner filed C.M.P.No.3860 of 2016 in C.C.No.247 of 2012 under Section 311 Cr.P.C., to recall P.W.1 to P.W.8 which was allowed by the learned Judicial Magistrate No.I, Karur on 25.10.2016 on payment of cost of Rs.250/- to each of the witnesses. The learned Magistrate had further directed the petitioner to file process within a period of two days. The petitioner did not file process and therefore, the petition to recall the witness was closed on 22.11.2016. Against the order passed by the learned Judicial Magistrate No.I, Karur, the petitioner has filed Crl.R.C.No.16 of 2017, which was dismissed by the Mahila Fast Track Court, Karur on 21.04.2017. Challenging the order, the petitioner is before this Court.



2. Under normal circumstances, this Court would not have entertained this petition. However, it is seen that the petitioner lost his right to cross-examine the witnesses for the failure of payment of batta. On the direction of this Court, the petitioner has deposited Rs.4,000/- before the learned Judicial Magistrate No.I, Karur on 17.06.2017 towards costs. Under such circumstances, this Court is of the view that it will be in the interest of justice if the orders passed by the Courts below are set aside. However, the petitioner will not be entitled to recall all the witnesses. Therefore, this Court directs the trial Court to issue process to recall C.Jeyganesh (P.W.1), J.Anthoni Michael (P.W.3), Paramasivam (P.W.5), Dr.Veluchamy (P.W.6) and Ananth, Constable No.1794 (P.W.8). If any of the said witnesses are either dead or not available, they need not be recalled. On the day of their appearance for giving evidence, they must be paid a cost of Rs.500/-(Rupees Five Hundred Only) from Rs.4,000/- that has been deposited by the petitioner. On the day of their appearance, the witnesses must be given the deposition in chief for them to refresh their memory and only thereafter, they can be cross-examined by the accused. On the appearance of the witness, if the accused fails to cross-examine them, even it is due to the boycott of the Court, he will forfeit his right to cross-examine them.

3. With the above directions, this Criminal Original Petition is allowed.

Sd/-
Asssistant Registrar(CSIII)

/Tru Copy/

Sub-Assistant Registrar

To

1.The Mahila Fast Track Court, Karur.

2.The Judicial Magistrate No.1, Karur

3.The Inspector of Police,
Karur Town Police Station,
Karur, Karur District.

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

+One cc to Mr.R.Mathiyalagan, Advocate, SR.No.62580

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RL/6C/2P/KP/SAR1/11/7/2017

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