

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.21833 of 2018

Arokia Antony Cezar @ Vinoth

.. Petitioner

Vs

The State represented by
Inspector of Police,
All Women Police Station,
Hosur.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order in Crl.M.P.No.54 of 2018 in C.C.No.88 of 2011, on the file of Judicial Magistrate No.2, Hosur, dated 15.03.2018 as unjust, illegal and in any event liable to be set aside.

For Petitioner : Ms.R.Poornima

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to set aside the order in Crl.M.P.No.54 of 2018 in C.C.No.88 of 2011, on the file of Judicial Magistrate Court No.2, Hosur, dated 15.03.2018, as unjust, illegal and in any event liable to be set aside.

2. The petitioner is facing prosecution in C.C. No.88 of 2011 before the Judicial Magistrate Court No.2, Hosur, for the offences under Section 498-A IPC r/w. Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002. The prosecution had examined eight witnesses, however, they were not cross-examined by the accused. The accused filed Crl.M.P.No.54 of 2018 in C.C.No.88 of 2011, which was dismissed by the trial Court on 15.03.2018, challenging which, the petitioner/accused is before this Court.

3. Heard the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor, appearing for the respondent police.

4. It is seen that P.W.1 to P.W.8 were examined in the following dates:

S.No.	Prosecution-side Witnesses	Date of Chief Examination
1.	P.W.1	09.04.2013
2.	P.W.2	21.01.2014
3.	P.W.3	28.07.2015
4.	P.W.4	27.07.2015
5.	P.W.5	27.07.2015
6.	P.W.6	27.07.2015
7.	P.W.7	19.08.2016
8.	P.W.8	07.07.2017

5. It appears that the witnesses were examined from the year 2013 to 2017 and for the reasons best known to the petitioner/accused, they have not been cross-examined. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288], the Supreme Court has directed that the witnesses should be cross-examined, immediately after the completion of their examination-in-chief. The Registrar General of this Court has issued a circular, directing all the trial Courts to follow the mandate of the Supreme Court in the case cited supra.

6. In State (NCT of Delhi) vs. Shiv Kumar Yadav [(2016) 2 SCC 402 : 2015 (9) Scale 649], the Supreme Court has set out the parameters for the exercise of powers under Section 311 Cr.P.C. In this case, after P.W.1 had adduce her evidence in the year 2013, she has obtained divorce and she has also got re-married and settled in America.

7. Therefore, for the failure of the petitioner/accused to cross-examine P.W.1, she cannot be recalled at this distant point of time. The petitioner/accused has also not given any valid reasons for recalling the prosecution witnesses.

Hence, this petition is dismissed qua P.W.1 to P.W.7. However, since P.W.8 has been cross-examined only on 07.07.2018, the trial Court is directed to recall P.W.8 for the purpose of cross-examination by the accused. On the date when P.W.8 appears before the trial Court, if the accused fails to cross examine P.W.8, even on account of boycott of Court, he shall forfeit his right to cross-examine P.W.8.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

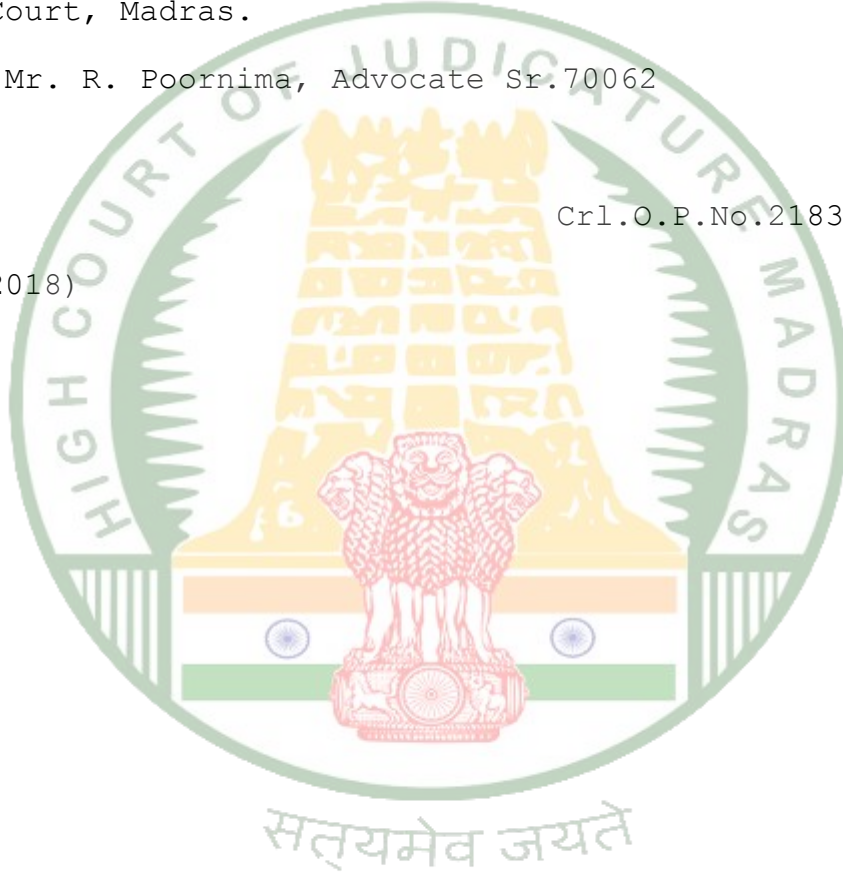
To

1. The Inspector of Police,
All Women Police Station,
Hosur.
2. The Judicial Magistrate No.2,
Hosur.
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. R. Poornima, Advocate Sr.70062

RSV(CO)
EU(30/10/2018)

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