

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
CRL.O.P.No.21938 of 2018

A.Bharathi

...Petitioner

Vs.

The State by Inspector of Police,
Anupparpalayam Police Station,
Tiruppur District.
Crime No.748 of 2013

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 24.08.2018 passed by the learned Mahila Judge, Tiruppur in Crl.M.P.No.450 of 2018 in Spl.S.C.No.19 of 2017.

For Petitioner :Mr.Karl Marx.K.C.

For Respondent :M/s.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed by the accused to set aside the order passed by the Mahila Court, Tiruppur in Crl.M.P.No.450 of 2018 in Spl.S.C.No.19 of 2017 dated 24.08.2018.

2.The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offence under Section 3 r/w 4 of

Protection of Children from Sexual Offence Act, 2012. He further submitted that on 14.05.2018, PW2 to PW6 were examined and on that date, the learned counsel for the petitioner who appeared for the petitioner herein has cross examined all those witnesses except P.W.3. He further submitted that P.W.3 was the Doctor, who examined the victim and issued a certificate. He further submitted that since P.W.3 expressed that she is having some urgent work, she was not cross examined on the same day and hence, the petitioner has filed an application under Section 311 of Cr.P.C. to recall P.W.3 on 23.07.2018. He further submitted that the said witness is a material witness. Unless she is cross examined, the petitioner will put into irreparable loss, but,

the Trial Court without considering the same, has dismissed the said application by the order dated 24.08.2018 and therefore, he prayed to set-aside the said order and give an opportunity to the petitioner to cross examine the P.W.3 (Dr.Divya).

3.The learned Additional Public Prosecutor has submitted that on 14.05.2018, on behalf of the prosecution, P.W.2 to P.W.6 were examined and they were cross examined by the learned counsel for the petitioner on the same day except P.W.3. She further submitted that the reason stated by the petitioner for not cross examining the P.W.3 on the same day is not correct and taking into consideration of all the aforesaid facts, the Trial Court has rightly rejected the petitioner's request and therefore, she requests to dismiss the petition.

4. If really, after taking chief examination, P.W.3 has stated that she is having some urgent work, the trial Court would have adjourned the case for cross examination. Further, the petitioner has not stated in his petition that only at the request of PW3, the petitioner's counsel has not cross examined her. Therefore, the aforesaid contention of the petitioner cannot be accepted.

5. The learned Public Prosecutor has stated that now the case is posted for questioning under Section 313 of Cr.P.C before the trial Court on 14.09.2018. Taking into consideration of all the aforesaid facts and also the charges which are being faced by the petitioner, this Court is of the view that an opportunity to be given to the petitioner for cross examine the P.W.3 (Dr.Divya). However, the petitioner should be put on terms.

6. In the result, this petition will be allowed on payment of cost of Rs.5,000/- to the Legal Services Authorities, Tirupur on or before 19.09.2018, failing which, this petition shall stand dismissed automatically without further reference to this Court.

7. If the petitioner has complied with the aforesaid condition within the time fixed by this Court, the trial Court has to recall P.W.3 and give an opportunity to the petitioner to cross examine the P.W.3. The petitioner should cross examine the P.W.3 on her appearance without seeking any adjournment.

8.With aforesaid observations, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Anupparpalayam Police Station,
Tiruppur District.

2.The Public Prosecutor,
Madras High Court,
Chennai.

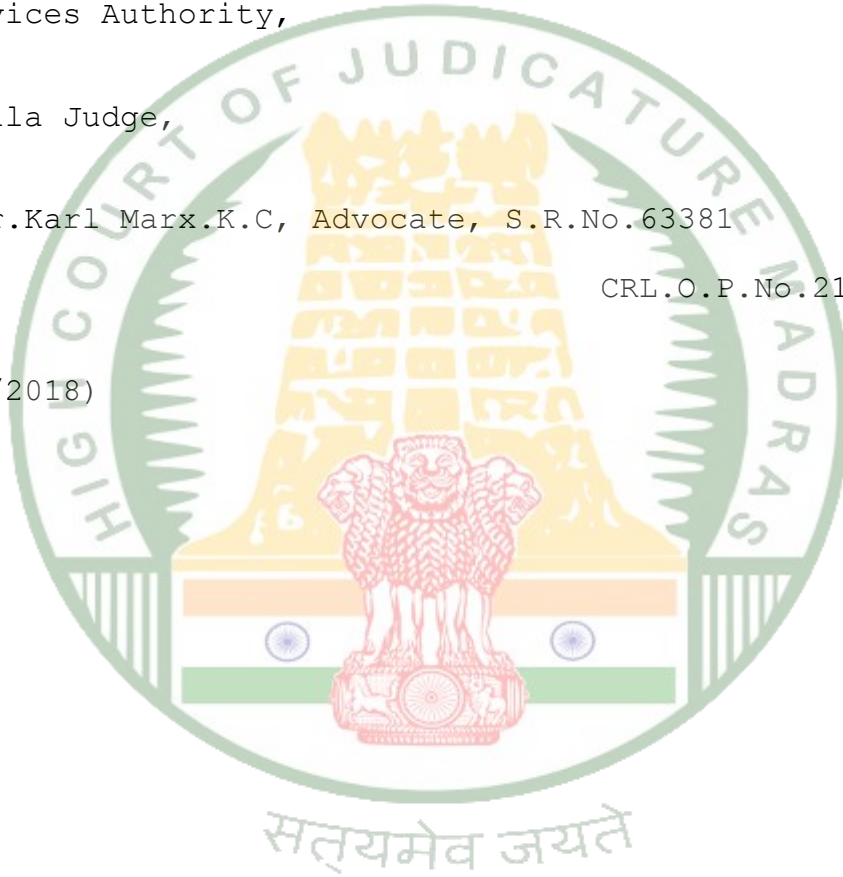
3.The Secretary,
Legal Services Authority,
Thiruppur

4.The Mahila Judge,
Thiruppur

+lcc to Mr.Karl Marx.K.C, Advocate, S.R.No.63381

CRL.O.P.No.21938 of 2018

GSP(12/09/2018)



WEB COPY