

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.08.2018

CORAM

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

Crl.O.P.No.19182 of 2018
and
Crl.MP.No.10105 of 2018

P.Madi @ Selladurai

...Petitioner

vs

The State Rep. by
The Inspector of Police
Mohanur Police Station
Namakkal District.

... Respondent

Criminal Original Petition has been filed under Section 482 Cr.P.C to call for the records relating to the impugned order passed in Crl.MP.No.144 of 2018 in S.C.No.103 of 2017 on the file of the Sessions Judge (Fast Track Mahila Court), Namakkal dated 03.05.2018 and set aside the same, by allowing the above Criminal Original Petition.

For Petitioner : Mr.K.A.Mariappan
For Respondent : Mr.C.Raghavan,
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the impugned order dated 03.05.2018 passed by the Sessions Judge (Fast Track Mahila Court), Namakkal in Crl.MP.No.144 of 2018 in S.C.No.103 of 2017 and set aside the same.

2. The petitioner is facing a prosecution in SC.No.103 of 2017 for the offence under Section 302 IPC before the Sessions Judge, (Fast Track Mahila Court), Namakkal District. PW1 to PW5 were examined-in-chief on various dates and the accused did not cross-examine them. Thereafter, the accused filed Crl.MP.No.144 of 2018 in SC.No.103 of 2017 under Section 311 Cr.P.C for re-calling PW1 to 5, which has been dismissed by the trial Court on

03.05.2018. Aggrieved by the said order, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent-State.

4. The learned counsel for the petitioner/accused submitted that the learned counsel appearing for the accused in Crl.MP.No.144 of 2018 was unwell and therefore, he was not able to cross-examine the witnesses. He further submitted that one more opportunity may be given to the accused to cross-examine the said witnesses.

5. Per contra, the learned Government Advocate (Crl. Side) refuted the contention.

6. It is seen that in the petition filed by the accused in Crl.MP.No.144 of 2018, he has not given any good reason for recalling the prosecution witnesses. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has given guidelines for exercising the powers under Section 311 Cr.P.C. In this case, the petitioner has merely stated that the learned counsel was unwell. As rightly pointed out by the trial Court, PW1 and PW2 were examined on 12.02.2018; PW3 was examined on 26.02.2018; PW4 and PW5 were examined on 12.03.2018. To say that the learned counsel was unwell on all the above three dates and therefore, he did not cross-examine the witnesses appears to be unacceptable. Though this Court does not find any illegality or perversity in the order passed by the trial Court, yet this Court is of the view that the interest of justice will be served if Perumal-PW4 and Shanmugam-PW5 are directed to be recalled for the purpose of cross-examination by the accused on the following conditions:

(a) On the dates fixed by the trial Court, PW4 and PW5 shall be recalled.

(b) The accused shall pay a costs of Rs.1,000/- each to the witnesses.

(c) The Public Prosecutor, incharge of the case and the trial Court shall furnish the deposition to the witnesses for them to read and refresh their memory and only thereafter, the accused can cross-examine them.

(d) Boycott of Courts shall not be stated as a reason for not cross-examining the witnesses when they appear.

(e) On the appearance of the witnesses, if the accused does not cross-examine, he will forfeit his right to recall them again.

With the above directions, this petition is ordered.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge
Fast Track Mahil Court
Namakkal District.
2. The Inspector of Police
Mohanur Police Station
Namakkal District.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.K.A.Mariappan, Advocate, S.R.No.52636

Crl.O.P.No.19182 of 2018

PA(CO)
GSP(16/08/2018)



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