

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.OP.No. 25993 of 2018

and

CRL.MP.No.14934 of 2018

Raja

...Petitioner/Accused

Vs.

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

....Respondent/Complainant

PRAYER: Criminal Original filed under Section 482 of Criminal Procedure Code, is prayed that this Hon'ble Court may be pleased to set aside the order dated 05.10.2018 in Crl.M.P.No.432 of 2018 in Spl. S.C.No.18 of 2016 on the file of the Learned Mahila Court, Perambalur and consequentially permit the petitioner to examine 1.Mr.Subramani, A-47, S/o. Chinnaiyan, 3rd East street, Bommanapodi village, Perambalur District and 2. Mr. Senthil Kumar, A-31, S/o.Periya Samy, at no:4/135, East Street, Bommanapodi village, Perambalur District as a defence side witness.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr. M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 Cr.P.C., wherein, the petitioner wanted to examine two more witnesses on the defence side.

2. It is seen from the records that the petitioner is facing trial before the Court below for an offence under Sections 5 (m) and 60 of POCSO Act 2012 & 506 (i) IPC. The prosecution had examined all the witnesses and they were also cross examined and the petitioner was questioned under Section 313 Cr.P.C on 05.05.2017. Thereafter, the case was posted for defence witness. The petitioner had examined three witnesses on

his side and the defence side evidence was also closed on 28.02.2018. Thereafter, the petitioner has filed a petition under Section 311 Cr.P.C to examine two more witnesses on the side of the defence. The Court below has dismissed the petition primarily on the ground that the petitioner has not even stated any reasons as to why he wants to examine two more witnesses and the Court below also came to a conclusion that the petitioner is unnecessarily protracting the proceedings.

3. The learned counsel for the petitioner would submit that the petitioner wants to establish his defence that there has been a wrong identity of the accused person in this case. The learned counsel would further submit that since a heavy burden has been cast on the accused person under Sections 29 and 30 of the Act, sufficient opportunity must be given to the petitioner to examine these witnesses. The learned counsel would further submit that one last opportunity may be given to the petitioner and a time can also be fixed by this Court for a completion of the proceedings.

4. The learned Government Advocate (Crl.Side) would submit that the petitioner has already examined three witnesses on his side and the evidence has been closed on the side of the defence in the month of February 2018. Thereafter, the petitioner has filed the petition under Section 311 Cr.P.C to examine two more witnesses.

5. The learned counsel would submit that the petitioner has not even stated any reasons as to why two more witnesses are to be examined on the side of the defence. Therefore, the learned counsel would submit that there are absolutely no merits in this petition and the same is liable to be dismissed by this Court.

6. This Court has carefully considered the submissions made on either side.

7. It is seen from the records that the petitioner has been given sufficient opportunity to examine the witnesses. In fact, the petitioner had already examined three witnesses on the side of the defence. The petitioner has not even stated any reasons in the application filed under Section 311 Cr.P.C as to why he wants to examine two more witnesses. The petition is completely bald without any reasons. The Court below took into consideration the conduct of the petitioner and had chosen to dismiss the application. This Court is not able to find any apparent illegality or infirmity in the order passed by the Court below.

8. The petitioner in this case has set up defence to the effect that there has been wrong identity of the accused person and therefore sufficient opportunity must be given to the petitioner to substantiate his defence. The petitioner has already cross examined three witnesses on his side. However, keeping in mind, the provisions of Sections 29 and 30 of the Act, this Court deems it fit to give one last opportunity to the

petitioner to examine two witnesses on the side of the defence. Therefore, the order passed by the Court below in Crl.M.P.No.432 of 2018, dated 19.09.2018 is hereby set aside.

9. The Court below is directed to issue summons to the two witnesses sought to be examined by the petitioner and fix a date for their examination. The petitioner shall complete the examination of the two witnesses on the same day they appear before the Court for giving evidence. If the petitioner fails to examine those two witnesses, on the same day, the petitioner shall forfeit his right to examine those witnesses in future.

10. The Court below is directed to complete the proceedings in Spl.S.C.No.18 of 2016 strictly within a period of one month from the date of receipt of a copy of this order and report compliance before this Court after the conclusion of the proceedings.

11. Accordingly, the Criminal Original Petition is allowed to the extent indicated herein. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh/raja

To

1. The Mahila Court, Perambalur.

2. The Inspector of Police,
All Women Police Station,
Perambalur.

3. The Public Prosecutor,
High Court, Madras.

4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Kingston Jerold, Advocate, S.R.No. 77793

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VBA(CO)
GN(10/12/2018)