

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27949 of 2018

and

Crl.M.P.No.16219 of 2018

C.Chandra

.... Petitioner/ Accused

Vs.

State of Tamil Nadu,
through Inspector of Police,
Udumalpet Police Station,
Tiruppur District.

.... Respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to direct the learned Additional Sessions Judge, Mahaleer Neethimandram, Tiruppur to permit the petitioner's defence counsel to liberally cross-examine the prosecution witnesses in S.C.No.24 of 2017 pending on its file, on all aspects including the issue of custodial torture which is the subject matter of trial in C.C.No.91 of 2016 pending on the file of the Learned Chief Judicial Magistrate, Coimbatore not only to prove her innocence but also to prove that the alleged confession stated to have been made by the petitioner/Accused before the Village Administrative Officer, Udumalpet on 14.08.2014, is illegal as she was continuously under the illegal custody of the respondent Police from 09.08.2014 till 14.08.2014 when she was remanded to custody, and further direct the Learned Additional Sessions Judge, Mahaleer Neeethimandram, Tiruppur to reject any question/s put to prosecution witnesses by the petitioner's Defence Counsel only after recoding the same.

For Petitioner : Mr.M.Purushothaman

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed aggrieved by the orders of the Court below not permitting the counsel for the petitioner to put relevant question in the course of the cross-examination.

2.The learned counsel for the petitioner would submit that the accused persons will have to establish their defence only by putting appropriate question to the witnesses in the course of the cross-examination. Therefore, the counsel representing the petitioner should not be stopped or restricted in putting question to the witnesses. The learned counsel for the petitioner would further submit that the liberty of the petitioner is involved in this case and the main defence that was taken by the petitioner is the alleged police torture, which is substantiated by materials available on record. The learned counsel for the petitioner would therefore, submit that the petitioner must be permitted to put relevant question based on materials that are already available and the counsel for the petitioner should not be restrained from putting appropriate question during the course of cross-examination.

3.This Court has carefully considered the submission made by the learned counsel for the petitioner. Chapter 10 of the Indian Evidence Act deals with the examination of the witnesses. Section 136 of the Indian Evidence Act gives the exclusive power to the Court to decide on the admissibility of the evidence, which will depend upon the fact in issue and also the relevant fact.

4.That apart Section 146 deals with question that can be lawfully put in a cross-examination. Sections 148 and 149 deal with the power of the Court to decide when questions shall be asked and when the witnesses can be compelled to answer and also to decide whether a question has been put with reasonable grounds/materials available on record.

5.The Trial Court is governed by this procedure and whatever questions fall within the parameters that are permitted under the Indian Evidence Act, cannot be denied to an accused person, since right to a fair trial is guaranteed under Article 21 of the Constitution of India. However, the Court must also ensure that irrelevant, scandalous or unwanted questions are not put at the time of the cross-examination.

6.This Criminal Original Petition is disposed of with the direction to the Court below to keep in mind the provisions that have been mentioned herein above and also the right of the accused to have a fair trial and accordingly proceed further with the trial. The Court below shall ensure that a fair

opportunity is given to the petitioner to cross-examine the witnesses in order to substantiate her defence.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The learned Additional Sessions Judge,
Mahaleer Neethimandram,
Tiruppur.
- 2.The Learned Chief Judicial Magistrate,
Coimbatore.
- 3.The Inspector of Police,
Udumalpet Police Station,
Tiruppur District.
- 4.The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.M.Purushothaman, Advocate, S.R.No.82094

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KAN (CO)
GSP (03/12/2018)

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