



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH  
Crl.O.P.(MD)No.19274 of 2018

Durairaj

: Petitioner/Accused No.1

Vs.

State rep by  
Inspector of Police,  
All Women Police Station,  
Nagercoil, Arulvamolzhi,  
Kanyakumari District.

: Respondent/Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed in Cr.M.P.No.737 of 2018 passed in C.C.No.47 of 2011 dated 03.05.2018 passed by the learned Judicial Magistrate, Boothpandi.

For Petitioner

: Mr.C.Christopher

For Respondent

: Mr.K.Suyambulinga Bharathi  
Government Advocate (Crl.side)

### **ORDER**

This Criminal Original Petition has been filed challenging the order of dismissal of the petition, filed by the petitioner under Section 311 Cr.P.C to re-call and cross-examine P.W.1 to P.W.6.

2.The petitioner is facing trial for the offence under Sections 294(b), 494, 498(A), 506(ii), 406 r/w 34 IPC and Sections 4 & 6 of Dowry Prohibition Act. In this case P.W.1 was examined on 18.06.2012 and P.W.2 to 5 were examined on 20.04.2015. Thereafter, P.W.6 was examined on 03.10.2017. The petitioner has not cross-examined any of these witnesses. The petitioner chose to wait till 2018 and had filed a petition before the Court below to recall and cross-examine P.W.1 to P.W.6. The Court below had dismissed the petition on the ground that the C.C.is of the year 2011 and the petitioner has not been taken any steps to cross-examine any of the witness for a very long time. The Court below has also taken support from the judgment of the Hon'ble Supreme Court in Vinoth Kumar Vs. State of Punjab. This Court does not find any apparent illegality or infirmity in the order passed by the Court below.

3.The learned Government Advocate (Crl.side) submitted that the case is still in the stage of trial and prosecution has to examine the Investigating Officer.



4.The learned counsel appearing for the petitioner also submitted that the petitioner did not cross-examine since an attempt was made to settle the matter between the parties since it involved matrimonial dispute.

5.In the circumstances of this case, this Court is inclined to give one last opportunity to the petitioner to cross-examine P.W.1 to P.W.3 and P.W.6. The learned counsel appearing for the petitioner submitted that the other four accused persons are only in-laws and they will not cross-examine any of the witnesses and it is enough if permission is granted to the petitioner. This Court is not inclined to recall and cross-examine P.W.4 and P.W.5, since they are aged more than 60 years.

6.The order passed by the learned Judicial Magistrate, Boothpandi in Cr.M.P.No.737 of 2018, dated 03.05.2018 stands modified. The order passed by the Court below dismissing the petition, insofar as P.W.4 and P.W.5 are concerned, is hereby confirmed. The Court below is directed to issue summons to P.W.1 to P.W.3 and P.W.6 by fixing date for their appearance. On the day when the witness appear before the Court below, the petitioner shall cross-examine those witnesses on the same day. If for any reason the petitioner fails to cross-examine the witnesses on the day when they appear before the Court below, the petitioner shall forfeit his right from recalling these witnesses in future.

7.The court below before putting the witnesses on box, shall permit the witness to go through the evidence given by them during chief examination, in order to re-collect the facts. The petitioner is further directed to pay a sum of Rs.1,500/- to each of the witnesses, when they appear before the Court below.

8.It is made clear that the petitioner shall examine further witnesses, who are examined on the side of the prosecution, on the same day when they are examined in chief.

9.In the result, this Criminal Original Petition is partly allowed. The Court below is directed to complete the trial within three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS I)



To

1.The Judicial Magistrate,  
Boothpandi.

2.The Inspector of Police,  
All Women Police Station,  
Nagercoil, Arulvamolzhi,  
Kanyakumari District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

- 1 CC TO Mr.C.Christopher, ADVOCATE IN SR No.93279
- gns
- DS RSK SKN SAR1 21 12 2018 3P 5C

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30.10.2018