

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.02.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2846 of 2019

Mohan

... Petitioner

Vs.

State by,
The Inspector of Police,
All Women Police Station,
Arani,
Thiruvannamalai District,
Crime No.11 of 2015.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order Crl.M.P.No.1622 of 2018 in C.C.No.149 of 2015 dated 03.01.2019 order passed by before the Judicial Magistrate, Arani, Thiruvannamalai District. And recall the witnesses PW1 to PW3 and enable the petitioner to cross examine the above witnesses in Crime No.11 of 2015 on the file of the respondent Police.

For Petitioner :Mr.S.Silambu Selvan

For Respondents :Mr.T.Shanmugarajeswaran
Government Advocate

O R D E R

This Criminal Original Petition has been filed challenging the order dated 03.01.2019, passed in Crl.M.P.No.1622 of 2018 in C.C.No.149 of 2015 on the file of the learned Judicial Magistrate, Arani, Thiruvannamalai, thereby dismissing the petition filed by the petitioner under Section 311 of Cr.P.C to recall the witnesses PW1 to PW3.

2. The learned counsel appearing for the petitioner would submit that PW1 to PW3 are the wife, Father-in-law and Mother-in-law of the petitioner and they are the main witnesses in this case. The petitioner was charged for the offences under Sections 498(A), 406, 506(i) of IPC, r/w Sec 4 of the Dowry Prohibition Act. Therefore, they are the main witnesses and necessarily they have to cross-examine. The petitioner has already filed a petition to recall PW1 to PW3 in Crl.M.P.No.3484 of 2018 and the same was also allowed on 29.10.2018. But unfortunately, he did not cross-examine PW1 to PW3 on the next hearing date, for the reasons that he did not possess the documents related to the complaints given by the defacto complainant to the various Police stations. Thereafter, again he filed a petition to recall PW1 to PW3 in

Crl.M.P.No.1622 of 2018 and the same was dismissed. Therefore, he sought for set aside the said order.

3. The learned Government Advocate would submit that the above case is of the year 2015 and the prosecution examined all the prosecution witnesses and also the case is posted for questioning on 13.02.2019. Therefore the learned Magistrate rightly dismissed the petition and there is absolutely no merits to consider the request made by the petitioner.

4. Heard Mr.S.Silambu Selvan, learned counsel appearing for the petitioner and Mr.T.Shunmuga Rajeswaran, learned Government Advocate appearing for the respondent police.

5. It is seen that the petitioner is the sole accused and the husband of the defacto complainant. PW2 and PW3 are the father-in-law and mother-in-law of the petitioner. They were examined in the year 2015 itself and the petitioner failed to cross-examine. Therefore the learned Magistrate considered the request made by the petitioner and allowed the petition to cross-examine PW1 to PW3 in Crl.M.P.No.3484 of 2018 by an order dated 29.10.2018. Even though, in the next hearing, the petitioner failed to cross-examine them for the reason that the complaints which are pending before the various police stations, lodged by the defacto complainant could not be traced out. Further, now the case is posted for questioning under Section 313 of Cr.P.C., on 13.02.2019.

6. Considering the facts and circumstances of the case, the petitioner can be given one more opportunity to cross-examine PW1 to PW3. Therefore, this Criminal Original Petition is allowed and the order dated 03.01.2019 in Crl.M.P.No.1622 of 2018, passed by learned Judicial Magistrate, Arani, Thiruvannamalai District, is set aside on condition that the petitioner shall cross-examine PW1 to PW3 on 13.02.2019 itself and no further time can be granted to the petitioner, failing which the learned Magistrate is directed to proceed the case further in accordance with law.

Sd/-
Assistant Registrar(CS)
//True Copy//
Sub Assistant Registrar

vv2/rts

To

1. The Judicial Magistrate,
Arani, Thiruvannamalai District

2. The Inspector of Police,
All Women Police Station, Arani,
Thiruvannamalai District,

3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.S.Silambu Selvan , Advocate SR.No. 9597

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A.SK(05/02/2019)



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