

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2865 of 2019

CrI.M.P.No.1879 of 2019

Balu @ Balamurugan

... Petitioner/Accused

Vs.

The State Rep. by
The Inspector of Police,
Palapatty Police Station,
Salem.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 02.01.2019 passed in C.M.P.No.2131 of 2018 in S.C.No.351 of 2016 on the file of the Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the learned Sessions Judge, Mahila Court, Salem in C.M.P.No.2131 of 2018 in S.C.No.351 of 2016 filed by the petitioner to recall the witnesses PW2 and PW4 under Section 311 of Cr.P.C.

2. The learned counsel for the petitioner would submit that the petitioner is the sole accused and he was charged for an offences under Sections 341, 307 and 506(ii) of IPC r/w Section 4 of the Tamilnadu Women Harassment Act. The prosecution has examined 21 witnesses and in fact, PW2 is the victim and PW4 is the eye witness to the occurrence. Due to inadvertent, they did not cross-examine the said witnesses in full and they want to cross-examine further. Therefore, he sought for further cross-examination of PW2 and PW4.

3. The learned Government Advocate appearing for the respondent would submit that there are 21 witnesses and the

prosecution has examined all the witnesses and today the matter is posted for arguments. Further, he would submit that only to drag on the proceedings, the petitioner filed this petition and nothing else. Therefore he vehemently opposed to allow this petition to further cross-examination of PW2 and PW4 and sought for dismissal of this petition.

4. It is seen from the records that the petitioner is the sole accused and there are totally 21 witnesses and the prosecution has completed their examination of witnesses. Now the case is posted for today and adjourned to 18.02.2019. It is also seen that after questioning the accused, it was posted for defense side witness and the petitioner did not produce any witness and filed a petition under Section 311 of Cr.P.C to recall PW2 and PW4, who are none other than the victim and the eye witness to the occurrence. Though they have already been cross-examined, the petitioner being a sole accused, he wants to cross-examine further.

5. Considering the facts and circumstances of the case, the petitioner can be given one more opportunity to cross-examine PW2 and PW4. Accordingly, this Criminal Original Petition is allowed and the order dated 02.01.2019 in C.M.P.No.2131 of 2018, passed by learned Sessions Judge, Mahila Court, Salem, is set aside, on condition that the petitioner shall cross-examine PW2 and PW4, on 18.02.2019 itself and no further time can be granted to the petitioner, failing which, the learned Sessions Judge, Mahila Court, Salem, is directed to proceed trial in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vv2/rts

To

1. The Sessions Judge, Mahila Court, Salem.

2. The Inspector of Police, Palapatty Police Station, Salem.

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

+1cc to Mr.A.K.Kumarasamy, Advocate SR.No.9218

CRL.O.P.No.2865 of 2019
and Crl.M.P.No.1879 of 2019

NMI (CO)

GMV (28/02/2019)