

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.3857 of 2019

Pushparaj

...Petitioner

-Vs-

State by
Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.
(Crime No.215/2016)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Spl.S.C.No.23 of 2016 on the file of the Fast Track Mahila Court, Dharmapuri and set aside the order dated 05.02.2019 dismissing the order passed in Cr.M.P.No.38 of 2019.

For Petitioner : Mr.V.Sakkarapani

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

ORDER

This Criminal Original Petition has been filed by the petitioner challenging the order passed by the court below in Criminal M.P.No.38 of 2019 in Spl.SC.No.23 of 2016 on the file of the Fast Track Mahila Court, Dharmapuri, thereby, dismissed the petition filed by the petitioner under section 311 of Cr.P.C to recall and cross examine PW1 to PW6.Now, the petitioner is facing trial before the Court below for the offence under sections 366 A IPC and 3 r/w 4 of POCSO Act 2012 and subsequently altered into 363, 366 IPC and 6 r/w 5(1) POCSO Act 2012. It is seen from the records that there are totally 29 witnesses shown as list of witnesses.

2. The learned counsel for the petitioner would submit that it is said that PW1 to PW6 have been examined on 11.12.2018 but on that day they were not examine due to the personal inconvenience of the counsel. Subsequently, the Petitioner cross examined only PW7 to PW9. Thereafter, they engaged a new counsel for the purpose of conducting the case, and the petition was

filed before the Court below under Section 311 Cr.P.C, seeking to recall and cross examine PW1 to PW6. This petition has been dismissed by the Court below by an order dated 05.02.2019 on the ground that the petitioner should have cross examined the witnesses on the same day they were examined in chief.

3. Therefore, this Court is of the considered view that one last chance can be given to the petitioner in order to recall and cross examine PW1 to PW6.

4. Therefore, this petition is allowed and the order passed by the Court below in CrI.M.P.No. 38 of 2019 dated 05.02.2019 is hereby set aside. The Court below is directed to issue summons to PW1 to PW6 to appear on 19.02.2019 for cross examination. On that day when PW1 to PW6 appears before the Court for giving evidence, the learned Counsel for the petitioner will have to cross examine those witnesses. If for any reason the petitioner fails to cross examine PW1 to PW6 on the day when they appear, the petitioner shall forfeit his right to recall those witnesses in future. Further, the petitioner is directed to pay the cost for hearing to PW1 to PW6. Hence, the petitioner shall cross examine on the day the PW1 to PW6 appears, failing which, the learned Judge is directed to proceed the trial in accordance with law.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

mpa/lpp

To

1. Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.

2. The Public Prosecutor,
High Court of Madras.

3. The Fast Track Mahila Court
Dharmapuri.

+1 CC to Mr.V.Sakkarapani, Advocate sr 12683

CrI.O.P.No.3857 of 2019

NRL (CO)
SP (14/02/2019)