

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.13680 of 2019
and Crl.MP No.6737 of 2019

Katturaja ... Petitioner/Petitioner/Accused

Vs.

State by
The Inspector of Police,
R6, Kumaran Nagar Police Station,
Chennai
Cr.No.182 of 2008

... Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order passed by the Court of Sessions Judge, Mahila court, Chennai in Crl.MP.No.8080 of 2019 dated 03.05.2019 and to direct the Court of Sessions Judge, Mahila court, Chennai to permit the petitioner to recall PW1 in S.C.No.126 of 2009.

For Petitioner : Mr.M.Jaikumar
For Respondent : Mr.C.Raghavan
Government Advocate

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, seeking to recall P.W.1 for the purpose of cross-examination.

2.It is seen from records that the petitioner is facing the trial for serious offences under Sections 450, 376 and 307 I.P.C. Originally the petitioner was shown as a witness in the case and subsequently the proceedings became a subject matter of challenge before this Court and this Court ordered re-trial and based on the materials available on record, the petitioner was made as an Accused and thus the petitioner is now facing trial for the above said offences. The petitioner did not cross-examine P.W.1 and therefore, filed an application under Section 311 of the Cr.PC to recall P.W.1 for cross-examination.

3.The Court below dismissed the petition on the ground that P.W.1 who is the victim in this case was examined in chief on 03.01.2019 and on the same day the petitioner chose not to cross-examine P.W.1. The Trial Court therefore found that the petitioner was unwilling to cross-examine the witness on the same day, she was examined in Chief and applying the dictum of the Hon'ble Supreme Court in Vinod Kumar Vs. State of Punjab reported in [2015] 1 MLJ (crl)288 (SC), the Trial Court thought it fit, not to give an opportunity to the petitioner to cross-examine P.W.1. The Trial Court also took into consideration the fact that the occurrence is of the year 2008 and the case has been pending for more than 11 years.

4.The learned counsel for the petitioner submitted that all the other prosecution witnesses have been cross-examined by the petitioner and the learned counsel for the petitioner was not able to cross examine P.W.1 on 03.01.2019, since certain records were not available and the counsel wanted to obtain the certified copy of the deposition of P.W.1 and thereafter, do the cross-examination. The learned counsel further submitted that since the petitioner is facing a very serious charges, one last opportunity may be given to the petitioner to cross-examine P.W.1, who is the victim and if such an opportunity is not given to the petitioner, the petitioner will be convicted merely based on the evidence of P.W.1.

5.The learned Government Advocate submitted that the sessions case is of the year 2009 and the case is already under retrial and this Court has also fixed a time limit for the completion of the proceedings. The petitioner knowing fully well about the same, chose not to cross-examine P.W.1 on the day she was examined in Chief and therefore, the petitioner cannot be permitted to take a stand that he was deprived of an opportunity to cross-examine P.W.1. The learned counsel further submitted that the Court below has to complete the proceedings within a time frame and there are absolutely no grounds to interfere with the order passed by the Trial Court.

6. This Court has carefully considered the submissions made on either side and also perused the material available on record.

7.The petitioner is facing certain serious charges and if he is not given an opportunity to cross examine P.W.1, the petitioner will be virtually convicted based on the evidence of P.W.1. That apart, the petitioner has cross-examined all the other witnesses. In order to ensure fair trial, this Court is of the considered view that one last opportunity can be given to the petitioner to cross-examine P.W.1.

8.The learned Counsel for the petitioner submitted that the case is posted for hearing tomorrow.

9. The Trial Court is directed to post the case for hearing on 13.06.2019 and on the said date, P.W.1 shall be present before the court. The petitioner is directed to pay a cost of Rs. 5,000/-(Rupees Five Thousand only) to P.W.1. Thereafter, the petitioner has to cross-examine P.W.1 on the same day and complete the cross-examination on the same day. If for any reason, the petitioner fails to cross-examine P.W.1 on 13.06.2019, the petitioner shall forfeit his right to recall P.W.1 in future and the Court can proceed further with the case in accordance with law.

10 .The order of the Court below made in CrI.MP.No.8080 of 2019 dated 03.05.2019 is hereby set-aside and the Court below is directed to proceed further in accordance with the directions given herein above. The Court below is further directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order. In the result this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

jrs/rka
To

1.The Sessions Judge
Mahila Court, Chennai

2. The Inspector of Police,
R6, Kumaran Nagar Police Station,
Chennai

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.Jaikumar, Advocate sr 15789.

CrI.O.P.No.13680 of 2019

CP (CO)
SP(12/06/2019)