

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.15581 of 2019
and
Crl.M.P.No.7726 of 2019

Krishnan

...Petitioner/Accused

Vs.

The State, rep. By
The Inspector of Police
Kitchipalayam Police Station
Salem District.
(Crime No.4 of 2015)

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 11.03.2019 passed by the Sessions Judge, Mahila Court, Salem, Salem District in C.M.P.No.1 of 2019 in S.C.No.218 of 2015 on the file of the Sessions Judge, Mahila Court, Salem, Salem District and to recall PW1 and PW2.

For Petitioner : Mr. B.Vasudevan
For Respondent : Mr.M. Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C to recall PW1 and PW2 for cross examination.

2. The petitioner is facing trial before the Court below for the offences under Sections 498(A) and 304(B) of IPC and Section 4 of Dowry Prohibition Act. The prosecution had examined 17 witnesses and the case was at the stage of questioning under Section 313 of Cr.P.C. The petitioner had chosen to cross examine PW3 to PW17. But, however for the reasons best known to the petitioner, PW1 and 2 who were examined in chief on 27.04.2017 were not cross examined. The

petitioner filed an application at the stage of 313 Cr.P.C questioning, under section 311 of Cr.P.C to recall PW1 and 2 for cross examination. This petition was dismissed by the Court below on the ground that the petitioner had not adduced any reasons for not cross examining PW1 and 2 and why he waited till the end to recall PW1 and PW2.

3. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to recall and cross examine PW1 and 2 and this Court can impose any conditions and the petitioner will comply with the same.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that there are absolutely no grounds to interfere with the orders passed by the Court below and the Court below was right in dismissing the application.

5. This Court has carefully considered the submissions made on either side and the materials placed on record.

6. It is clear from the records that the prosecution had examined 17 witnesses and the case was at the stage of questioning under Section 313 of Cr.P.C. The petitioner has chosen to cross examine all the other prosecution witnesses except PW1 and PW2 and has chosen to recall PW1 and 2 at the fag end. Admittedly, the petitioner did not seek for deference of the cross examination of PW1 and PW2. The petitioner has also not stated anything in the petition as to why PW1 and PW2 are sought to be recalled for cross examination at the fag end after nearly two years.

7. This practice adopted in the trial Court by recalling important witnesses at the fag end has been deprecated by this Court in its order dated 13.06.2019 made in CrI.O.P. No.14998 of 2019. The relevant portion of the order is extracted hereunder:

"5. This Court is able to see a pattern that is adopted in many cases which are pending trial before the subordinate Courts. The pattern is that important witnesses are not examined when they are examined in chief and the counsel goes to the extent of submitting that there is no cross. Ultimately during the end of the proceedings, a petition is filed under Section 311 of Cr.P.C. to recall the witness. This practice of seeking deferment of cross-examination which right has been given under the Cr.P.C. is not being adopted. The Hon'ble Supreme Court in a recent judgment in the case of State of Kerala Vs. Rasheed reported in (2019) 1 MLJ (CrI) 326 (SC) has already given guidelines with regard to deferral of cross-examination.

6. The Court below has rightly taken note of this pattern of not cross-examining the important witnesses without seeking for deferral of the cross-examination and attempting to recall these witnesses after a long period of time for cross-examination and has lightly held that it should never be entertained by any Court. This is one of the major reasons for the witnesses turning hostile. It is the duty of the accused person to cross-examine witnesses on the same day they are examined in Chief or within a reasonable time. They should not be permitted to recall witnesses at their will and pleasure and if such practice is not stopped, the entire trial will become a mockery".

8. This Court does not find any illegality or infirmity in the orders passed by the Court below and there are no grounds to interfere with the same.

9. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in S.C.No.218 of 2015 within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Salem, Salem District.
2. The Inspector of Police
Kitchipalayam Police Station
Salem District.
(Crime No.4 of 2015)

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

CRL.O.P.No.15581 of 2019
and
Crl.M.P.No.7726 of 2019

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