

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.21936 of 2019

1.Harikrishnan
2.Vijayarangam

...Petitioners

-Vs-

The Inspector of Police,
All Women Police Station,
Melmaruvathur.
(Crime No.10 of 2016).

.... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and set aside the order in Crl.M.P.No.1092 of 2019 in Spl.C.No.3 of 2018, dated 11.07.2019, passed by learned Mahila Judge, Chengelpattu.

For Petitioner : Mr.S.Mohanavadivelan

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

O R D E R

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 PW.1 to PW.3, for the purpose of cross examination.

2. The petitioners are facing trial before the Court below for an offence under Sections 354 (D), 496, 503 and Section 12 r/w 11 (4) of POCSO Act.

3. The prosecution examined PW.1 to PW.3. These witnesses were not cross examined. Therefore, the petitioner filed an application under Section 311 of Cr.P.C to recall PW.1 to PW.3 for cross examination.

4. The Court below dismissed the application, on the ground that the witnesses ought to have been cross examined on the same day they were examined in chief. The Court below also took into consideration, Section 33(5) of POCSO Act, wherein, a victim cannot be exposed before the Court again and again.

5. The learned counsel for the petitioners submitted that the petitioners are facing very serious charges before the Court below. The learned counsel further submitted that there was already a relationship between the first petitioner and the victim girl and a false case has been foisted against the petitioners, since the parents of the victim girl did not want the relationship to continue.

6. The learned Additional Public Prosecutor submitted that the Court below has given cogent reason for dismissing the application filed by the petitioners and there are absolutely no grounds to interfere with the same.

7. It is seen from records that PW.1 to PW.3 were examined in chief. On 26.10.2018 and 03.01.2019, and these witnesses were not cross examined, since the counsel for the petitioner filed an application to defer the cross examination and the same was dismissed and therefore the evidence was closed. Subsequently, an application was filed to recall PW.1 to PW.3 for cross examination.

8. Taking into consideration the facts and circumstances of the case and also of the fact that the petitioners are facing serious charges, this Court deems it fit to give one last opportunity to the petitioners to cross examine PW.1 to PW.3.

9. The order passed by the Court below in Crl.M.P.No.1092 of 2019, dated 11.07.2019 is hereby set aside. The Court below is directed to issue summon to PW.1 to PW.3 and fix a date for cross examination on the day of their appearance, they shall be cross examined by the petitioners and the cross examination shall be completed on the same day. If for any reasons, the petitioners fail to cross examine the witnesses, they shall forfeit their right to recall the witnesses in future.

10. In the result, this Criminal Original Petition is allowed and the Court below, is directed to complete the proceedings in Spl.C.No.3 of 2018, within a period of three months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Mahila Judge,
Chengelpattu.

2.The Inspector of Police,
All Women Police Station,
Melmaruvathur.

3.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.S.Mahanavadivelan, Advocate Sr.69456

Crl.O.P.No.21936 of 2019

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srg 18/09/2019



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