



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 10.09.2019  
CORAM

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

Crl.O.P.No.12597 of 2019 and  
Crl.M.P(MD).No. 7836 of 2019

Karuppasamy

... Petitioner/Sole Accused

-Vs-

The State rep. by  
The Inspector of Police,  
Rajathani Police Station,  
Theni District.  
(Crime No. 368/2018)

... Respondent/Complainant

**Prayer:** Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Fast Track Mahila Judge, Theni in Crl.M.P.No.879 of 2019 on 20.08.2019 and recall the PW.1 to PW.17 for the purpose of Cross Examination.

|                |                                                                   |
|----------------|-------------------------------------------------------------------|
| For Petitioner | : No appearance                                                   |
| For Respondent | : Mr. K. Suyambulinga Bharathi<br>Government Advocate (Crl. Side) |

**ORDER**

This Criminal Original Petition has been filed to set aside the order passed by the learned Mahila Judge, Fast Track Court, Theni in Crl.M.P.No.879 of 2019, dated 20.08.2019, thereby, dismissing the application filed under Section 311 Cr.P.C., to recall the witnesses PW.1 to PW.17 filed by the petitioner herein.

2. On perusal of the typed set of papers filed along with this petition, it is found that the petitioner is accused in Spl.S.C.No. 59 of 2018 and being taking cognizance for the offences under Sections 5(K), 5(L) and 6 of POCSO Act, 2012 and 506(i) IPC and he is incarceration in imprisonment from the date of his arrest pursuant to the Crime No. 368 of 2018. Therefore, he could not able to cross examine the witnesses on the date of cross examination. Hence, he has filed an application under Section 311 Cr.P.C., on earlier occasion to cross examine the prosecution witnesses and the same was allowed on payment of cost to the witnesses, by order dated 30.07.2019. Since the petitioner is under incarceration, he could not able to pay the cost before the Trial Court and as such, he did not cross examine any of the prosecution witnesses. Again, the present application has been filed by the petitioner before the



trial Court and same was dismissed for the reason that the earlier application was allowed on cost and the said cost was not paid by the petitioner.

3. Further, the trial is pending for the reason that the petitioner did not cross examine the prosecution witnesses and keep on trial, filed an application under Section 311 Cr.P.C., and further prosecution side evidence was closed as early as on 27.07.2019.

4. Considering the above facts and circumstances of the case, the petitioner may be given an one more opportunity to cross examine the prosecution witnesses 1 to 8 alone.

5. In view of the above, the order passed by the learned Mahila Judge, Fast Track Court, Theni in Crl.M.P.No.879 of 2019, dated 20.08.2019, is set aside and the petitioner is permitted to cross examine PW.1 to PW.8 alone on payment of cost of Rs.1,000/- to each of the petitioners viz., PW.1 and PW.3 to PW.8 and a sum of Rs.5,000/- to PW.2 and also necessary charges.

6. The Trial Court is directed to fix the date for recall and cross examine those witnesses. If the petitioner fails to cross examine on the date fixed by the trial Court, the Trial Court is directed to proceed with the case in accordance with law.

7. With the above observations and directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS )

To

1. The Fast Track Mahila Judge, Theni
  2. The Inspector of Police,  
Rajathani Police Station,  
Theni District.
  3. The Public Prosecutor,  
High Court, Madras.
  4. The Additional Public Prosecutor,  
High Court, Madras.
- <https://hcservices.madras.gov.in/Services/> of Madras High Court, Madurai.



+1 CC to Mr.P.AJU TAGORE, Advocate ( SR-86214[F] dated 10/09/2019 )

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