



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**
Crl.O.P.[MD] No.18703 of 2019
and
Crl.M.P[MD]No.10975 of 2019

Esakkiappan : Petitioner/Petitioner/Sole Accused

vs.

The State rep. by
The Inspector of Police
Pazhavor Police Station,
Tirunelveli District.
(Crime No.85 of 2008)

: Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order of the Court of the Sessions Judge, Mahila Court, Tirunelveli, Tirunelveli District dated 26.06.2019 made in Crl.M.P.No.4463 of 2019 in Sessions Case No.131 of 2015 in Crime No.85 of 2008 on the file of the Inspector of Police, Pazhavor Police Station, Pazhavor, Tirunelveli District and consequently, permit the petitioner to cross examine the witnesses P.W.1, 2, 3, 7, 8 and 9 forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

O R D E R

This criminal original petition is filed to set aside the order of the Sessions Judge, Mahila Court, Tirunelveli, Tirunelveli District dated 26.06.2019 made in Crl.M.P.No.4463 of 2019 in SC No.131 of 2015 in Crime No.85 of 2008 on the file of the Inspector of Police, Pazhavor Police Station, Pazhavor, Tirunelveli District and consequently, permit the petitioner to cross examine the witnesses P.Ws.1, 2, 3, 7, 8 and 9 forthwith.

2.The learned counsel for the petitioner would submit that the petitioner is the sole accused in this case and he is the rustic villager and he had engaged a counsel, but unfortunately, the counsel had failed to cross examine the witnesses on the day of their appearance for examination in chief. He would submit that if an opportunity is not given to the petitioner to cross examine them, it will amount to the case of no defence, resulting in conviction



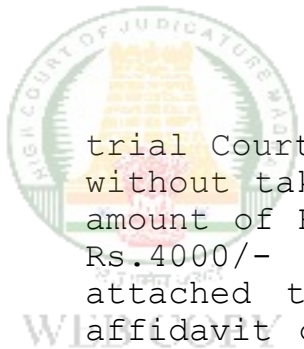
putting the petitioner to great hardship.

3.Per contra, the learned Additional Public Prosecutor appearing for the respondent police would submit that the petitioner has not been vigilant. He would submit that the case is of the year 2008 and the case was taken up on file as PRC No.54 of 2015 and committed to the Court of Sessions Judge on 10.04.2015 as S.C.No.131 of 2015. From the date, when the case was made over to the trial Court, the petitioner remained absconding and non-bailable warrant was issued against him and on 01.07.2015, the petitioner surrendered and the non-bailable warrant was recalled and on 28.02.2017, L.Ws.1 and 2 were examined as P.Ws.1 and 2 and that on 07.03.2017, concerned Sub-Inspector of Police had submitted a report that L.W.1 was reported dead and thereby L.W.1 was dispensed with. Thereafter, P.Ws.6 and 7 were examined in chief on 17.03.2017 and P.Ws.9 and 10 were examined on 24.04.2017 and once again, the petitioner absconded and non-bailable warrant was issued and recalled. Thereafter, P.W.11 was examined on 27.12.2018 and P.W.12 was examined on 20.03.2018. He would further submit that the case is pending for the examination of Investigating Officer. He would further submit that the trial Court finding that the petition to recall has been filed belatedly, had rightly dismissed the petition.

4.Heard both sides.

5.I have gone through the order passed by the trial Court. The trial Judge following the mandate of the Hon'ble Apex Court's Judgment in **Vinothkumar vs. State of Punjab**, had rightly dismissed the petition. However, since the petitioner is facing trial for the serious charges under Sections 366(A), 417, 376 of IPC, this Court is of the opinion that if the chance is not given to the petitioner to recall and cross examine the witnesses, it would amount to a case of no defence, resulting in prejudice to the petitioner. This Court directed the learned Additional Public Prosecutor to get instructions from the respondent police whether they would be able to produce the witnesses for cross examination. The learned Additional Public Prosecutor, on instructions from the respondent police, submitted that the witnesses are natives of Ponnavaikulam within the jurisdiction of the respondent police and that the respondent police will be able to produce them for cross examination. Since it is reported that the witnesses are available and the respondent would be able to produce them before Court, this Court is of the opinion that the petitioner may be permitted to recall and cross examine the witness on imposition of costs and terms

6.Accordingly, the petitioner is directed to file an application along with the deposit of Rs.10,000/- on the next hearing date viz., 18.12.2019. On such deposit being made, the trial Court shall fix the date for production of the witnesses, viz., P.Ws.1, 2, 3, 7, 8 and 9 and on their appearance before the



trial Court, the petitioner shall cross examine them on the same day without taking any adjournment. The trial Court shall disburse the amount of Rs.1000/- each to the witnesses and the balance amount of Rs.4000/- will be paid to the District Legal Services Authority attached to the Court concerned. The petitioner shall file an affidavit of undertaking that the witnesses will be cross examined on the same day of their appearance. In the event of failure of the petitioner to cross examine the witnesses on the same day, the petitioner shall loose the chance of further cross examination. The case is of the year 2008 and the Sessions Case is of the year 2015, the trial court shall take the case on day today basis and complete the trial and pass orders within two months from the next hearing date.

7.With the above directions, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

skn

To

1.The Sessions Judge,
Mahila Court, Tirunelveli.

2.The Inspector of Police
Pazhavor Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-105415[F] dated
17/12/2019)

Cr1.O.P.[MD] No.18703 of 2019

and

Cr1.M.P[MD]No.10975 of 2019

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