

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.2205 of 2020

Venkatesh ... Petitioner/Accused

Vs.

The State

Rep.by Inspector of Police,
AWPS Attur,
Salem District

...Respondent/Complanant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 26.12.2019 in Crl.MP.No.4 of 2019 in S.C.No.191 of 2015 on the file of the learned Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.S.T.BharathGowtham
for Mr.I.Siddharthan

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

ORDER

This petition has been filed by the accused to set aside the order passed by the Sessions Judge, Mahila Court, Salem in Crl.M.P.No.4 of 2019 in S.C.No.191 of 2015 dated 26.12.2019.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Sections 417 and 376 IPC . He further submitted that on the side of the Prosecution, 13 witnesses were examined as P.W.1 to P.W.13. He further submitted that out of the said witnesses, the petitioner has already cross-examined P.W.1 to P.W.3, but, he could not examine the other witnesses as his counsel was pre-occupied by his personal works and hence, he filed a petition under Section 311 of Cr.P.C in Crl.MP.No.4 of 2019 in S.C.No.191 of 2015 to re-call P.W.4 to P.W.13 for cross-examination, but,

the learned trial court Judge without considering the petitioner's request, he dismissed the said petition. He further submitted that since the petitioner is facing serious charges, an opportunity may be given to the petitioner to cross-examine those witnesses, or otherwise, he will put to irreparable loss and hence he prayed to allow this petition and set aside the order passed by the learned Sessions Judge and permit the petitioner to cross-examine the aforesaid witnesses.

4. Per Contra, the learned Additional Public Prosecutor has submitted that P.W.4 was already elaborately cross-examined on the side of the petitioner/accused. He further submitted that the other witnesses were examined in chief on different dates. The contention of the petitioner that his counsel pre-occupied by his personal works on all those days cannot be accepted. He further submitted that the case is at the stage of argument. Now, the case is adjourned to 10.02.2020 for arguments. Hence, he strongly opposed and prayed to dismiss this petition.

5. A perusal of the order passed by the learned Sessions Judge, Mahila Court, Salem in Crl.MP.No.4 of 2019 in S.C.No.191 of 2015 shows that P.W.4 was already cross-examined elaborately and the cross-examination runs to nearly six pages. Hence, the contention of the learned counsel for the petitioner that since the petitioner's counsel who appeared before the trial court pre-occupied by his personal work, he could not cross-examine the said witness cannot be accepted.

6. In so far as the other witnesses are concerned, it appears that the said witnesses were examined on different dates and therefore, the contention of the petitioner that on all those days, his counsel was pre-occupied by his personal works also cannot be accepted. When the matter is posted for defence side witness, the petitioner has filed a petition on 21.11.2019 to re-call the aforesaid witnesses. The conduct of the petitioner shows that he has not diligently conducted the case. However, taking into consideration of the charges being faced by the petitioner, in order to give one more opportunity to the petitioner, this Court is inclined to allow this petition in so far as P.W.5 to P.W.13 are concerned by imposing stringent conditions.

7. For the aforesaid reasons, this petition is dismissed in respect of the prayer for re-calling P.W.4. In so far as the prayer for re-calling the witnesses P.W.5 to P.W.13 are concerned, this petition will be allowed on deposit of Rs.18,000/- towards the expenses of P.W.5 to P.W.13 before the trial court on or before 14.02.2020, failing which, the

petition shall stand dismissed without further reference to this court. In case, the petitioner has complied with the aforesaid condition within the aforesaid period, the trial court is directed to recall P.W.5 to P.W.13 and give an opportunity to the petitioner to cross examine the aforesaid witnesses. The petitioner is directed to cross examine the said witnesses on their appearance without seeking any further adjournment.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Salem.

2. The Inspector of Police,
AWPS Attur,
Salem District

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

+1cc to Mr.I.Siddharthan, Advocate Sr.No.8413

AKM/06.02.2020 /3P-5C/

CRL.O.P.No.2205 of 2020

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