

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.3011 of 2020

Samraj

... Petitioner/Accused

Vs.

State Rep. by

The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

Cr.No.223 of 2013.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the dismissal order passed in Crl.MP.No.779 of 2019, in SC.No.49 of 2014 dated 28.01.2020 on the file of the Fast Track Mahila Court, Dharmapuri.

For Petitioner :Mr.V.Sakkarapani

For Respondent :Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the Fast Track Mahila Court, Dharmapuri in Crl.MP.No.779 of 2019, in SC.No.49 of 2014 dated 28.01.2020.

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 offence under Section 302 of IPC. He further submitted that on the side of the prosecution, 23 witnesses were examined in chief on different dates but since the Senior Counsel has entrusted the matter with the Junior Counsel, the Junior counsel has not cross examined the said witnesses on those dates and hence on 28.11.2019, the petitioner has filed a petition to recall Pws.1 to 23 for cross examination. But, the learned Trial Court Judge

without giving opportunity to the petitioner to cross examine the said witnesses, dismissed the said petition. He further submitted that since the aforesaid witnesses are material witnesses an opportunity may be given to the petitioner to cross examine the said witnesses or otherwise the petitioner would be highly prejudiced.

5. The learned Additional Public Prosecutor has submitted that the aforesaid witnesses were examined on various dates and on those dates the petitioner has not made any arrangement for cross examining the said witnesses. With a view to drag on the said proceedings, he filed a petition to recall the aforesaid petition on 28.11.2019. He further submitted that taking into consideration of the aforesaid facts, the Trial Court Judge has dismissed the petition and the said order may not be interfered.

6. It is seen from the order passed by the learned Trial Court Judge that Pws.1 to 8 were examined in chief on 13.09.2019, Pws.9 to 14 were examined on 16.09.2019, Pws.14 to 18 were examined on 23.09.2019, PW.19 was examined on 06.11.2019 and Pws.20 to 23 were examined on 28.11.2019. In all those dates, the petitioner has not cross examined the aforesaid witnesses. The only reason mentioned in the petition which has been filed by the petitioner under Section 311 of Cr.P.C is due to lack of instructions, the aforesaid witnesses were not cross examined. It is the duty of the petitioner to give instructions to the counsel for cross examine the witnesses. If he has not given the instructions to the counsel for cross examination, he cannot blame anyone.

7. However, taking into consideration, the petitioner is facing serious charge under section 302 of IPC and the aforesaid witnesses are material witnesses, in order to give one more opportunity to the petitioner, this court is inclined to allow this petition by imposing stringent conditions.

8. For the aforesaid reasons, this petition will be allowed on deposit of Rs.50,000/- (Rupees Fifty Thousand only) before the Trial Court, towards expenses to P.Ws.1 to 23, on or before 25.02.2020, failing which, the petition shall stand dismissed without further reference to this court. In case, the petitioners have complied with the aforesaid condition within the aforesaid period, the trial court is directed to recall P.Ws.1 to 23 and give an opportunity to the petitioner to cross examine the said witnesses. The petitioner is directed to cross examine the said witnesses on their appearance without seeking any further adjournment.

9. With the aforesaid directions, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The Judge,
Fast Track Mahila Court, Dharmapuri.

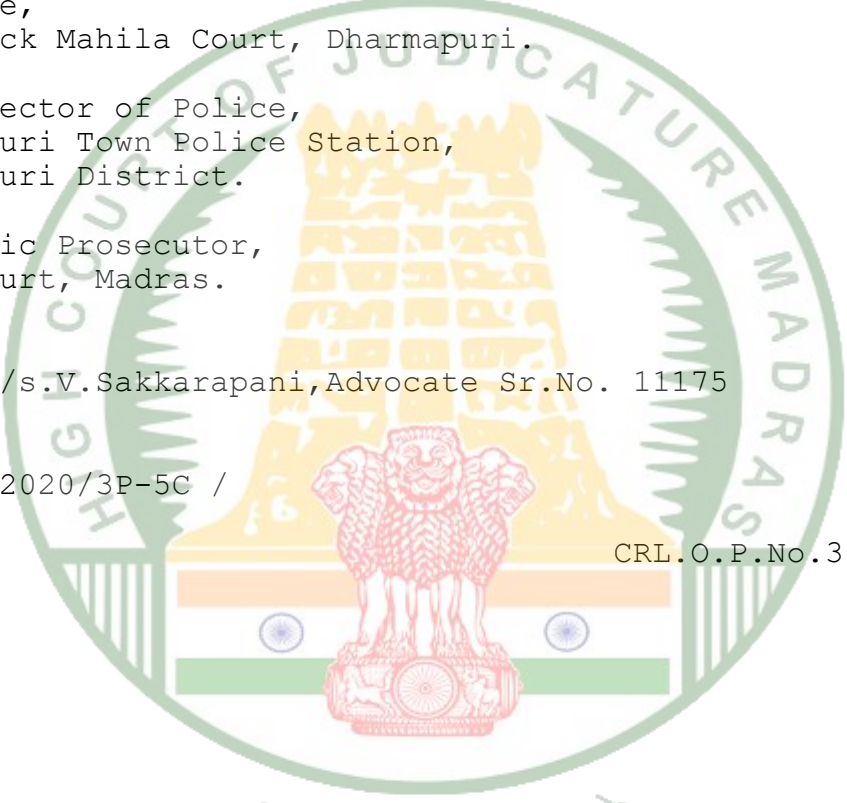
2. The Inspector of Police,
Dharmapuri Town Police Station,
Dharmapuri District.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.V.Sakkarapani, Advocate Sr.No. 11175

AKM/14.02.2020/3P-5C /

CRL.O.P.No.3011 of 2020



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