

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.16369 of 2019
and
Crl. M.P. No.8206 of 2019

1. M. Sekar
2. M. Mariya Selvam
3. Anthoniammal
4. Ragini
5. Regina
6. Louis Solamon

...Petitioners

Vs.

K. Prabhavathi

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC praying to set aside the order dated 12.03.2018 passed by the Hon'ble Additional Mahila Court (Metropolitan Magistrate), Egmore at Allikulam, Chennai in C.M.P. No.2765 of 2017 in New D.V.C. No.43 of 2016 (Old CC No. 3162 of 2015).

For Petitioners : Mr. D. Harikrishnan

For Respondent : No appearance.

ORDER

This Criminal Original Petition is directed against the order dated 12.03.2018 passed in CMP No.2765/2017 in D.V.C. No.43/2016 on the file of the Additional Mahila Court (Metropolitan Magistrate), Egmore at Allikulam, Chennai.

2. The respondent has laid the domestic violence case against the petitioners in CC No.3162 of 2015 and the same is pending on the file of the Additional Mahila Court (Metropolitan Magistrate), Egmore, Chennai. It is found that the respondent has examined herself as P.W.1 in the abovesaid case and despite adequate opportunities, the petitioners had not endeavoured to cross examine the respondent in full and consequently the trial court has closed the evidence of P.W.1. Thereafter, it is found that very belatedly the petitioners have come forward with the petition in CMP No.1433 of 2017 to recall

P.W.1 for further cross examination. The court below had, with a view to enable the petitioners to cross examine P.W.1, entertained the abovesaid petition on conditions. By way of the order passed in the abovesaid CMP, it is found that the petitioners had been directed to cross examine P.W.1 on 27.06.2017 itself. Despite the abovesaid direction, the petitioners had not endeavoured to cross examine P.W.1 on the said date and successfully thereafter also dragging on the matter endlessly. Following the same, it is found that the evidence of P.W.1 has been closed. Thereafter, the petitioners have preferred the petition in CMP No.2765 of 2017 to recall P.W.1 for further cross examination. The only reason that has been adduced by the petitioners in the abovesaid C.M.P. is that they were ready to cross examine P.W.1 on 09.08.2017 and as their counsel was held up in the High Court in connection with the other case, he was unable to be present in the court and proceed with the cross examination of P.W.1 and therefore, according to them, the petitioners should be provided with an opportunity to recall P.W.1 for further cross examination.

3. The abovesaid petition preferred by the petitioners had been stoutly resisted by the respondent contending that despite sufficient indulgence by the court, the petitioners had not endeavoured to cross examine P.W.1 and dragging on the matter endlessly to cause undue hardship and loss to the respondent and therefore, prayed for the dismissal of the petition.

4. By way of the impugned order, the court below on considering the ample opportunities provided to the petitioners to cross examine P.W.1 on earlier occasions and their deliberate endeavours to delay the proceedings endlessly by taking adjournments and further considering the conditional order passed in CMP No.1433 of 2017 and further noting that despite the pause over, as the petitioners had not endeavoured to cross examine P.W.1, resultantly proceeded to dismiss the petition preferred by the petitioners to recall P.W.1. Impugning the said order, the present Criminal Original Petition has been laid.

5. Considering the abovesaid factors in toto, it is found that the petitioners had been successfully dragging on the proceedings for the purpose of cross examination of P.W.1 from 04.02.2017 onwards. In such view of the matter, the court below is found to have rightly closed the evidence of P.W.1. Even thereafter, the petitioners had not come forward with any petition to recall P.W.1 immediately. Belatedly they had preferred CMP No.1433 of 2017 to recall P.W.1. As above pointed out, the abovesaid petition has been ordered on condition specifically directing the petitioners to cross examine P.W.1 on 27.06.2017 itself. Despite the same, the petitioners had not endeavoured to cross examine P.W.1 and further been delaying the

matter endlessly and in such view of the matter, it is found that the court below had rightly closed the evidence of P.W.1.

6. In the light of the abovesaid factors, the argument put forth by the petitioners' counsel that their counsel was ready on 09.08.2017 to cross examine P.W.1 and the court had refused to allow them to cross examine P.W.1, as such, cannot be countenanced. When it is found that the petitioners had been taking their own time in cross examining P.W.1 and successfully delaying the matter for more than three years and when the petitioners have not adduced sufficient cause as to why they had not endeavoured to cross examine P.W.1 on 27.06.2017 or subsequent thereto and further when it is seen that the court below had granted sufficient indulgence to enable the petitioners to cross examine P.W.1, the petitioners having failed to avail the said opportunities, their conduct, viewed in toto, would only go to demonstrate, as determined by the court below, that their aim is only to procrastinate the proceedings endlessly with a view to cause immense hardship and loss to the respondent. In such view of the matter, the court below is found to be justified in declining the request of the petitioners to recall P.W.1 for further cross examination. As rightly held by the court below, only on sufficient cause being shown, the petitioners would be entitled to recall the witness. When the petitioners have not adduced sufficient cause and when from their conduct, as above discussed, the petitioners had failed to avail the opportunities provided to them to cross examine P.W.1, in such view of the matter, the court below is found to be justified in dismissing the petition preferred by the petitioners to recall P.W.1.

7. For the reasons aforestated, I do not find any infirmity or error in the impugned order passed by the court below. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Additional Mahila Court (Metropolitan Magistrate)
Egmore at Allikulam, Chennai.

+2cc to Mr.Anil Sandeep, Advocate in Sr.27714

CrI OP.No.16369 of 2019

PA (CO)
RV (15/09/2020)



25.08.2020

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