



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Cr1.O.P(MD).No.718 of 2020

Kuttai Vinoth @ Vinoth Kumar

... Petitioner

Vs.

The State Rep. By
The Inspector of police,
Budalur Police Station,
Thanjavur,
Thanjavur District.
(Crime No.70 of 2013)

... Respondents

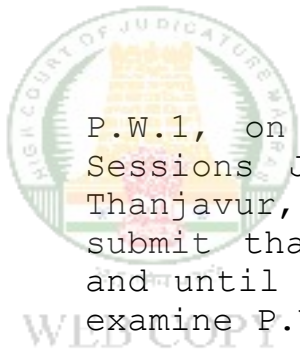
Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 19.11.2019 passed in Cr1.M.P.No.843 of 2019 in S.C.No.153 of 2018 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District.

For Petitioner	:	Mr.A.Thiruvadi Kumar
For Respondent	:	Mr.S.Chandrasekar Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 19.11.2019 passed in Cr1.M.P.No.843 of 2019 in S.C.No.153 of 2018 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused in S.C.No.153 of 2018 pending on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thanjavur, Thanjavur District facing trial for the offence under Sections 448, 376, 511 and 307 IPC. He would further submit that right from the date of arrest, the petitioner is in custody. He would further submit that the trial has commenced on 12.09.2019 and on the same day P.W.1 was examined in chief. Since the petitioner is in custody, he was unable to instruct his counsel properly and thereby he was unable to cross examine P.W.1. Thereafter, the petitioner had filed a petition in Cr1.M.P.No.843 of 2019 in S.C.No.153 of 2018 to recall



P.W.1, on 18.09.2019 and the same was dismissed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thanjavur, Thanjavur District, on 19.11.2019. He would further submit that the petitioner is facing serious charges and unless and until the petitioner is granted one more opportunity to cross examine P.W.1, no prejudice would be caused to P.W.1.

3.The learned Additional public Prosecutor appearing for the respondent would submit that the trial Court taking into consideration the dictum laid down in the case of Vinoth Kumar Vs. State of Maharashtra, had dismissed the petition seeking to recall P.W.1. He would further submit that now the case has been posted for examination of L.W.6 to 11 in chief on 22.01.2020. He would further submit that totally 18 witnesses are there in this case and the trial is in progress.

4.This Court gone through the order passed by the trial Court and it is seen that the trial Court had dismissed the petition filed under Section 311 Cr.P.C., following the dictum laid in the case of Vinoth Kumar Vs. State of Punjab. I do not find any infirmity or illegality in the order passed by the trial Judge. However, the fact remains that the petitioner is facing serious charges and P.W.1 is a crucial witness. This Court is of the opinion that if P.W.1 is not permitted to be cross examined it will cause serious prejudice to the petitioner who is in custody without bail, which will result in impairment of fair trial and justice.

5.In view of the same, this court enquired the learned Additional Public Prosecutor whether the respondent will be able to produce P.W.1 before the Court below at the date fixed by the trial Court, for cross examination.

6.The learned Additional Public Prosecutor, on instructions, submitted that P.W.1 is very much available in her village and the respondent police will be able to produce P.W.1 before the Court below on any date fixed by the trial Court for cross examination.

7.In view of the same, the order dated 19.11.2019 passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, Thanjavur District, in CrI.M.P.No.843 of 2019 in S.C.No.153 of 2018 is set aside and the trial court is directed to fix a date and direct the respondent to produce P.W.1 for cross examination on that date without fail. If the petitioner fails to cross-examine prosecution witnesses on the date fixed by the trial Court, the trial Court is directed to proceed with the trial in accordance with law.



8. With the above directions, this criminal original petition is disposed of.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar (CS)

vsg

To:

1. The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Thanjavur, Thanjavur District.

2. The Inspector of police,
Budalur Police Station,
Thanjavur,
Thanjavur District.

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

+1 CC to M/s. A. THIRUVADIKUMAR, Advocate (SR-2167[F] dated
21/01/2020)

Crl.O.P(MD).No.718 of 2020
21.01.2020

KG (CO)

TR(30.01.2020) 3P 5C