



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.(MD) No.2167 of 2020

and

Crl.M.P.(MD) .No.1098 of 2020

Packiyaraj

.. Petitioner//Petitioner/Accused

Vs.

State represented by,
The Inspector of Police,
All Women Police Station,
Sattur,
Virudhunagar District.
(Crime No.5/2015.)

..Respondent/Respondent/
Complainant

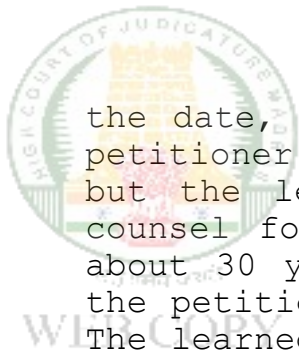
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 17.09.2019 passed in Cr.M.P.No.1653 of 2019 in Sessions Case No.210 of 2015 on the file of the Mahalir Court (Fast Track Mahalir Court), Virudhunagar District and direct the learned Sessions Judge, Mahalir Court (Fast Track Mahalir Court), Virudhunagar District, to recall the PW.1, PW.4 and PW.6 for cross-examination in Sessions Case No.210 of 2015 on the file of the learned Mahalir Court (Fast Track Mahalir Court), Virudhunagar District.

For Petitioner : Mr.P.Muthusamy
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 17.09.2019 passed in Cr.M.P.No.1653 of 2019 in Sessions Case No.210 of 2015 on the file of the learned Sessions Judge, Mahalir Court (Fast Track Mahalir Court), Virudhunagar District and also to recall PWs.1, 4 and 6 for cross-examination.

2. The learned counsel for the petitioner would submit that the petitioner is facing trial for charges under Sections 450 and 376(2) of the Indian Penal Code. On account of illness, the petitioner's counsel was not present on



the date, when PWs.1, 4 and 6 were examined in-chief. Thereby, the petitioner had filed a petition seeking to recall PWs.1, 4 and 6, but the learned trial Judge had dismissed the same. The learned counsel for the petitioner would further submit that PW.1 is aged about 30 years. However, the learned trial Judge, while dismissing the petition to recall, has referred to Section 33(5) of POCSO Act. The learned counsel would also submit that the evidence of PW.1 was also recorded through an interpreter and though the petitioner was present on the said date, he was unable to cross-examine the prosecution witness, since the counsel was not available and thereby now seek to recall PWs.1, 4 and 6 for cross-examination.

3. I have considered the submissions of the learned counsel for the petitioner and perused the documents placed before this Court.

4. Since the petitioner is facing serious charges for the offences under Sections 450 and 376(2) of IPC, this Court enquired whether the respondents will be able to produce PWs.1,4 and 6 for cross-examination on the next hearing date. The learned Additional Public Prosecutor on instructions of the respondent police submitted that PWs.1, 4 and 6 are very much available and that the respondent police will be able to produce them for cross-examination.

5. I have gone through the order passed by the trial Judge. The trial Judge in the interest of speedy trial and not to cause harassment or hardship to the witnesses has dismissed the petition. The trial Judge has passed the order in consonance with the judgment of the Hon'ble Supreme Court in ***Vinothkumar v. State of Punjab [2015 (1) MLJ (Crl.O.P. (MD) .No.) 288]***. I do not find any infirmity in the order passed by the trial Judge. However, since the petitioner is facing trial for serious charges this Court is of the opinion that one chance may be given to the petitioner to recall and cross-examine PWs.1, 4 and 6, who are the crucial witnesses and therefore, this Court is of the opinion that the petition can be allowed on fixation of cost and terms.

6. Accordingly, the petitioner is directed to file an application along with process memo for payment of Rs.3,000/- on 10.02.2020, before the trial Court. On such filing, the respondents shall serve summons on witnesses 1, 4 and 6 and produce them for cross-examination before the trial Court on the next hearing date, ie., on 12.02.2020 without fail and the trial Judge shall disburse Rs.1000/- each, to the witnesses on the same day. Further, the petitioner shall file an affidavit of undertaking that the witnesses will be cross-examined on the same day on their production before the trial Court. In the event of the petitioner not cross-examining them on that day, the petitioner shall lose his chance to cross-examine them in future.

7. With the above direction, this Criminal Original Petition



stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

PJL

To

1. The Inspector of Police,
All Women Police Station,
Sattur,
Virudhunagar District.

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

+1 CC to M/s.P.MUTHUSAMY, Advocate (SR-5245[F] dated 07/02/2020)

Cr1.O.P. (MD) No.2167 of 2020
07.02.2020

KK/SAR/07.02.2020/3P-4C/