



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P.[MD]No.17657 of 2018
and
CRL MP (MD)No.7834 of 2018

Krishnakumar ... Petitioner / Petitioner / A1

Vs.

1.Jeyachandran ...1st Respondent / 2nd Petitioner / A2

2.State represented by
Assistant Public Prosecutor ...2nd Respondent / Respondent /
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crl.M.P.No.08 of 2018 in C.C.No.18 of 2018, on the file of Additional Mahila Magistrate (FAC), Nagercoil and set aside the same and permit the petitioner to cross examine the witnesses P.W.2 and P.W.3.

For Petitioner : Mr.S.C.Herold Singh

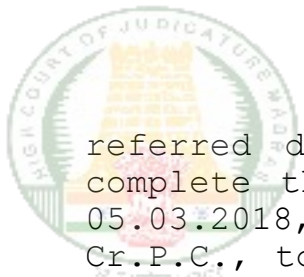
For Respondent : Mr.APG OHM Chairma Prabhu
R2 Government Advocate (Crl side)

O R D E R

This Criminal Original Petition has been filed seeking the relief to call for the records in Crl.M.P.No.08 of 2018 in C.C.No.18 of 2018, on the file of Additional Mahila Magistrate (FAC), Nagercoil and set aside the same and permit the petitioner to cross examine the witnesses P.W.2 and P.W.3.

2. The case of the petitioner before the trial Court is that the petitioner is arrayed as Accused No.1 in C.C.18 of 2018 in which a charge was framed against the petitioner and others for the offence punishable under Sections 341, 294(b), 352 and 506(ii) of IPC., and Section 4 of Prohibition of Harassment of Women Act.

3. During the course of trial proceedings, P.W.2 was examined on 07.08.2014 and P.W.3 was examined on 25.08.2014. Though the cross examination of P.W.2 and P.W.3 has been recorded on the above



referred date, the counsel appearing for the petitioner did not complete the cross-examination of P.W.2 and P.W.3. Thereafter, on 05.03.2018, the petitioner filed an application under Section 311 of Cr.P.C., to recall the witnesses P.W.2 and P.W.3 for the purpose of completing the cross-examination. In the meanwhile, the said case has been transferred from the file of the learned Judicial Magistrate No.II, Nagercoil to the Court of Additional Mahila Magistrate (FAC), Nagercoil. In Additional Mahila Court (FAC) Nagercoil, the learned Magistrate, without considering the prayer sought for by the petitioner dismissed the application. Therefore, the petitioner prays to set aside the order passed in Crl.M.P.No.8 of 2018 in C.C.No.18 of 2018.

4. Now, on go through the impugned order passed by the learned Additional Mahila Magistrate, it is made clear only for the reason that there was no specific reason has been stated by the defence side for non cross-examination of the witnesses and also for the reason that the application in respect to the impugned order has been filed after a lapse of four years, the prayer sought for by the petitioner cannot be granted and therefore, the petition was dismissed.

5. It is true, the reasons stated by the Magistrate for dismissing the application is correct and genuine. Further, the dispute is in respect to the marriage proposal. Though the case has been registered in the year of 2011, for rendering the real justice, complete and full opportunity must be given to the petitioner for the purpose of cross-examining the witnesses, who are all examined on the side of the prosecution. In fact, Section 311 of Cr.P.C., empowers the Magistrate to permit the petitioner for completing the cross-examination at any stage during the time of trial. Otherwise, this Court has no hesitation to say that the petitioner acted lethargically in participating the trial proceedings. Therefore, we are of the opinion that this petition has to be allowed on payment of cost of Rs.5,000/- which has to be paid to the Hon'ble Chief Justice Relief Fund.

6. Accordingly, this Criminal Original Petition is allowed on payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the credit of the Hon'ble Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai.

7. On payment of costs, the learned Magistrate is directed to fix one day, after the Court resumed the regular work, in advance intimation to the petitioner's counsel. Thereafter, on the day of appearance of P.W.2 and P.W.3, the petitioner is directed to complete the cross-examination without fail. If the petitioner is failed to cross-examine the witnesses viz., P.W.2 and P.W.3, on a date which was fixed by the Magistrate with advance intimation, this order stands automatically dismissed, without any further reference



to this Court. Consequently, the connected miscellaneous petition is closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar(CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional Mahila Magistrate (FAC),
Nagercoil.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Accounts Officer,
The Chief Justice Relief Fund,
Madurai Bench of Madras High Court, Madurai.

CrI.O.P. [MD]No.17657 of 2018
20.08.2020

VB (31.08.2020) 3P 4C