



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.(MD).No. 18809 of 2019
and Crl.M.P(MD) No. 11046 of 2019

Karnan ...Petitioner/Respondent/Sole accused
Vs.

State represented by
The Sub-Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District. ...Respondent/Petitioner/Complainant
(in Crime No. 304 of 2009)

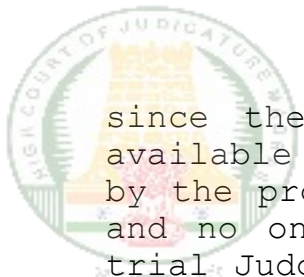
PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order passed by the Mahila Court (Fast Track Mahila Court), Virudhunagar District at Srivilliputtur in Crl.M.P. No. 1859 of 2019 in S.C. No. 45 of 2010 on 03.10.2019 and allow this Criminal Original Petition.

For Petitioner : Mr.M. Jothi Basu
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

The Petition has been filed to set aside the order passed by the Mahila Court (Fast Track Mahila Court), Virudhunagar District at Srivilliputtur in Crl.M.P. No. 1859 of 2019 in S.C. No. 45 of 2010 on 03.10.2019 and allow this Criminal Original Petition.

2. It is seen from the records that the petitioner is facing trial in S.C. No. 45 of 2010 for the offence under Section 302 of IPC. The petitioner's son, namely, Mareeswaran was examined as P.W.2 in chief on 21.02.2018 and four other witnesses were examined. Later, the accused was questioned under Section 313(1) of Cr.P.C. and the case was posted for argument and the petitioner has also filed his written argument. When the case was posted for arguments on the side of the prosecution, the respondent/prosecution has filed a petition under Section 311 of Cr.P.C. seeking to recall P.W.2 for cross examination. The reasons stated in the petition was that P.W.2 was examined in chief on 21.02.2018 and that he had not supported the prosecution,



since the Public Prosecutor had gone on training and was not available P.W.2 was not treated hostile and was not cross examined by the prosecution. The petitioner/accused had not filed counter and no one had appeared for the respondent/accused. The learned trial Judge allowed the petition for recalling P.W.2. Against the order passed by the learned trial Judge recalling P.W.2, the present Criminal Original Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that P.W.2 was examined in chief on 21.12.2018 and on the same day three other witnesses were examined by the prosecution. P.W.2 had not supported the case of the prosecution, whereas, P.W.3 & P.W.4 had supported the prosecution. He would further submit that though the prosecutor was very much available and he had examined all the witnesses he had not treated P.W.2 as hostile and not cross examined him. Thereafter, the petitioner's side argument was closed and after the case has been posted for argument on the side of the prosecution, the present Petition has been filed to fill up the lacuna and that the impugned order has been passed, without affording sufficient opportunity to the petitioner to file a counter or to oppose the petition or to contest the same. He would further submit that though the Public Prosecutor was available on the particular day the trial Judge failed to take into consideration the false plea that the Public Prosecutor was not available on the particular day when P.W.2 was examined and the learned trial Judge without verifying the Court records passed the impugned order without affording an opportunity to the petitioner/accused.

4. The learned Public Prosecutor appearing for the respondent would submit that, as per Section 311 of Cr.P.C. *the Court can summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.* He would further submit that, though P.W. 2 has supported the prosecution during the course of investigation, he had turned hostile and that the prosecution has failed to treat him as hostile witness and failed to cross examine him and hence, he has to be recalled and cross examined for arriving at a just decision in the case.

5. At this juncture, the learned counsel appearing for the petitioner would submit that the impugned order has been passed without affording sufficient opportunity to put forth his case and infact the petitioner was not allowed to counter the averment that the prosecutor was not available on that day. He would further submit that the impugned order has to be set aside and the petition may be remanded back to the trial Court for



reconsideration after affording opportunity to the petitioner.

6. Heard both sides and perused the materials available on record.

7. It is seen that the petition has been filed after the arguments have been put forth on the side of the defence. Further, the petitioner was not afforded any opportunity to file his counter in Crl.M.P. No. 1859 of 2019.

8. In view of the same, this Criminal Original Petition is allowed and the order, dated 03.10.2019 passed in Crl.M.P. No. 1859 of 2019 in S.C. No. 45 of 2010 on 03.10.2019 by the learned Mahila Judge, (Fast Track Mahila Court), Virudhunagar District at Srivilliputtur is set aside and the matter is remanded back to the trial Court. The learned trial Judge is directed to pass order after affording an opportunity to the petitioner in accordance with law. The petitioner shall file a counter in Crl.M.P. No. 1859 of 2019 in S.C. No. 45 of 2019, within **One Week** from the date of receipt of a copy of the order and the learned trial Judge is directed to complete the enquiry and pass an order in Crl.M.P. No. 1859 of 2019, within a period of One week thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1. The Judge, Mahila Court (Fast Track Mahila Court),
Virudhunagar District at Srivilliputtur.
2. The Sub-Inspector of Police, Mamsapuram Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.M.LAW ASSOCIATES, Advocate (SR-3555[F] dated
29/01/2020)

Crl.O.P.(MD).No.18809 of 2019
28.01.2020

JMN(31.01.2020) 3P : 5C

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