

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.211 of 2021 &
Crl.M.P.No.93 of 2021

Krishnaraj @ Thangaraj

..Petitioner/Accused

-vs-

The State represented by the
Inspector of Police,
All Women Police Station,
Tirupathur,
Vellore District
Crime No.2 of 2014

..Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings of the order dated 18.12.2018 in CMP.No.891 of 2018 in SP. S.C.No.4 of 2018 on the file of the Mahila Court at Vellore, Vellore District and set aside the same.

For Petitioner : Mr.R. Muruga Bharathi

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under section 311 Cr.P.C., to recall PW1 to PW3 for cross examination.

2. The petitioner is facing trial before the Court below for the offences under sections 376(2)(h)(m), 417 of IPC and Section 6 r/w.5(1) of POCSO Act. After the framing of the charges, the prosecution started examining the witnesses from the year 2018 onwards. PW1 and PW2 were examined in chief and they were not cross examined on the day when they were examined in chief. Hence an application came to be filed under Section 311 of Cr.P.C., in CMP.No.244 of 2018 to recall PW1 and 2 for cross examination and this application was allowed by an order dated 24.4.2018.

3. The petitioner cross examined PW1 in extenso on 29.5.2018. Similarly PW2 was cross examined on 29.5.2018. Thereafter PW3 was also cross examined by the petitioner on 17.09.2018. Curiously when the earlier petition was filed for recalling the witnesses, the reason that was assigned was that the petitioner was not in possession of the necessary materials when the chief examination was conducted and therefore was not able to cross examine the witnesses.

4. When the prosecution was taking steps to examine the other witnesses, one more application came to be filed seeking to recall PW1 to PW3 for further cross examination and this application has been dismissed by the Court below by an order dated 18.12.2018. Aggrieved by the same, the present petition has been filed before this Court.

5. Heard Mr.R.Muruga Bharathi, learned counsel for the petitioner and Mr.M.Mohammed Riyaz, learned Addl. Public Prosecutor appearing for the respondent.

6. In the considered view of this Court, the present petition must be dismissed mainly on the ground of laches. An order that was passed by the court below on 18.12.2018 has been challenged before this Court in the year 2021. This inordinate delay has not been explained. That apart, the petitioner has assigned the very same reason for recalling PW1 to PW3 namely that he was not in possession of the necessary materials and therefore the witnesses will have to be recalled for cross examination. That apart, the recall of the witnesses is also sought for on the ground that there is a new counsel who has been engaged by the petitioner and he found that certain vital questions have not been put to the witnesses.

7. It is now a settled principle of law that a witness cannot be recalled under section 311 of Cr.P.C., only for the reason that the earlier counsel had not put the necessary questions and therefore the new counsel wants to improve upon the cross examination of the witnesses. This is a practice which should never be encouraged since a party will be able to recall witnesses every time when he changes the counsel. The efficiency level of the counsel, who keeps changing, to cross examine a witness can never be a ground to repeatedly recall witnesses and that is not the purport of section 311 of Cr.P.C.

8. Useful reference can be made to the judgment of the Honourable Supreme Court reported in 2017 1 MLJ Criminal 437 (State of Haryana Vs. Rame Mehar and others)

9. In view of the above discussion, this Court does not find any illegality or infirmity in the order passed by the

Court below and there are absolutely no grounds to interfere with the same.

10. Accordingly, this Criminal Original petition is dismissed and the court below is directed to complete the proceedings in Spl.S.C.No.4 of 2018 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

MSR

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court at Vellore,
Vellore District.
2. The Inspector of Police,
All Women Police Station,
Tirupathur, Vellore District
3. The Public Prosecutor,
High Court, Madras.

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(CO)
rv(09/02/2021)

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