

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.04.2021
CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8116 of 2021
and
Crl.M.P.No.5346 of 2021

Maheswaran

... Petitioner/Accused

Versus

State Rep.by the Inspector of Police
Karipatty Police Station
Salem District.
Crime No.138 of 2017 ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 05.03.2021 made in Crl.M.P.No.133 of 2021 in S.C.No.335 of 2017 on the file of the Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.S.Sivakumar
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 05.03.2021 made in Crl.M.P.No.133 of 2021 in S.C.No.335 of 2017 on the file of the Sessions Judge, Mahila Court, Salem.

2. The petitioner/accused in S.C.No.335 of 2017 had failed to cross examine PW1 to PW4. Thereafter, he had filed 311 Cr.P.C. petition to recall PW1 to PW4, however the Lower Court permitted to recall the PW1, who is the victim and dismissed with regard to PW2 to PW4. Thereafter, again the petitioner filed a petition to recall PW2 to PW4, which came to be dismissed. Hence, he filed the present Criminal Original Petition.

3. The learned counsel for the petitioner submitted that PW2 to PW4 are close relatives to the victim girl and these witnesses have not been allowed to cross examine purposely. The petitioner is facing serious charge of crime and the evidence will be completed only, if they were cross examined, otherwise the petitioner would lost his right to challenge the evidence of the witnesses and also his defence.

4. The learned Additional Public Prosecutor has submitted that the petitioner had filed 311 Cr.P.C., before the trial Court to recall PW1 to PW4 and the trial Court had permitted to recall PW1 and dismissed with regard to PW2 to PW4. Thereafter, he filed another petition to recall PW2 to PW4, which was also dismissed. Against which, the present Cr1.O.P. is filed without assigning any valid reason, and hence, the same may be dismissed.

5. Considering the above submissions, it is seen that PW2 to PW4 were examined in chief on 24.01.2019 and since the defence counsel was not present before the Court on the said date, those witnesses were not subjected to cross examination. Perusal of records would further show that PW1 was also examined on 24.01.2019 and she was also not cross examined on the said date. Since the petitioner is facing trial for serious offence, right of cross examination cannot be denied to the petitioner. Further, PW2 to PW4 are crucial witnesses and hence, they cannot be left unchallenged by the petitioner, otherwise, the petitioner could not defend his case. Hence, this Court is inclined to recall PW2 to PW4 and the petitioner shall cross examine PW2 to PW4 on the same day of their presence without seeking any further adjournment.

6. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna
To

1.The Sessions Judge, Mahila Court,
Salem.

2.The Inspector of Police
Karipatty Police Station
Salem District.
Crime No.138 of 2017

3.The Public Prosecutor
High Court of Madras.

Cr1.O.P.No.8116 of 2021
and
Cr1.M.P.No.5346 of 2021

VBM(CO)
A.SK(12.07.2021)