



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17652 of 2021

Deepak @ Danny
S/o Manoharan

...Petitioner / Accused

Versus

The State rep by
Inspector of Police,
All Women police Station,
Kilpauk, Chennai-600 010
(Crime No.7 of 2017).

... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 26.08.2021 passed in Crl.M.P.No.13471 of 2021 in S.C.No.75/2018 by the learned Sessions Judge, Magalir Neethimandram, Allikulam, Chennai.

For Petitioner : Mr.K.M.Subheramaniam

For Respondent : Mr.A.Damodaran
Addl.Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioner, who is an accused in S.C.No.75 of 2018 is facing trial for offences under sections 376 I.P.C and 67 of Information Technology Act, has filed this petition under Section 311 of Cr.P.C in Crl.M.P.No.13471 of 2021 in S.C.No.75/2018 to recall the PW 2, PW3 and PW6 for cross-examination. The lower court by an order dated 26.08.2021 had allowed this petition with conditions that the petitioner to pay a costs of Rs.5,000/- towards Women Compensation Fund and further to pay a sum of Rs.3,000/- each to each witnesses as witness batta. Aggrieved by the same, the present Criminal Original Petition has been filed.



2. The petitioner submits that recently petitioner underwent the trauma of Covid-19 Pandemic, he is not with any employment presently, with great difficulty, he is taking care of his aged mother. He is finding great difficulty in sustaining himself and his mother to take care of daily needs. The very sustainability has become a questionable one, at this stage imposing cost and directing to pay total sum of Rs.14,000/- would be beyond his capability. Hence, sought for waiver.

3. The learned Additional Public Prosecutor (Crl. Side) appearing for the respondent would submit that this case has been kept pending from the year 2018 for one reason or the other. The PW2 was examined in chief as early as on 20.08.2018. The PW3 was examined in chief on 17.09.2018. Thereafter, a petition has been filed to defer the cross-examination of P.W.2 and P.W.3 and the same was allowed. Subsequently, other witnesses were examined on 17.09.2018. In the meanwhile, PW2 and PW3 had appeared for cross examination on 05.10.2018. Though PW2 and PW3 appeared, no cross examination was done, latter further cross examination was sought, which was dismissed. Hence, this petition is filed. The trial court though finding that the petitioner adopting dilatory tactics and the victim had been made to suffer the ordeal of appearing before the trial court and sent back without any reason, considering that the petitioner is facing serious offence of grave nature, allowed the petition to recall PW2, PW3 and PW6 on condition to pay a cost of Rs.5,000/- towards 'Women Compensation Fund' created under Clause 3(1) of the Tamil Nadu Victim Compensation Scheme For Women Victims/Survivors of Sexual Assault/other crimes-2018 and also to pay Rs.3000/- each to each witnesses recalled on the date the witnesses present. Therefore, the learned Additional Public Prosecutor submitted that the cost imposed is reasonable and in this case except the Investigating Officer, all other witnesses have already been examined and the examination of the Investigating Officer will be completed on 20.10.2021.

4. Considering the submissions and perusal of the materials, this court finds that the Trial Court has been considerate in recalling PW2, PW3 and PW6. It is seen that witnesses are local witnesses, further due to the prevailing Pandemic Covid-19 situation persons who are privately employed are facing great difficulty in surviving, it has become a nightmare for most of them. This petitioner hails from an ordinary background, at this juncture, directing the petitioner to deposit and incur such huge amount will be an odious task as rightly submitted by the petitioner.



5. In view of the same, this court set aside the condition of deposit of cost of Rs.5000/- to the TamilNadu Victim Compensation Scheme for Women Victims /Survivors of Sexual Assault/other crimes, 2018, likewise payment of Rs.3,000/- each to PW2, PW3 and PW6 is reduced and modified to Rs.1,000/-each. The petitioner to make the payment to the witnesses on the day of appearance of the witnesses before the Trial Court.

6. With the above modification, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

tsi/nr

To

1. The Sessions Judge,
Magalir Neethimandram,
Allikulam, Chennai.
2. Inspector of Police,
All Women police Station,
Kilpauk, Chennai-600 010
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.17652 of 2021

JP-II(CO)
SB(06/10/2021)