

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20731of 2020
and Crl.MP.No. 8778 of 2020

Akilandeswari

... Petitioner

Vs.

The State Rep. by its
The Inspector of Police
Tittakudi Police Station
Cuddalore District.
Cr.No.193 of 2014

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 05.11.2020 made in Crl.MP.No.48 of 2020 in SC.No.143 of 2015 on the file of the learned III Additional District cum Sessions Judge, Virudhachalam by allowing this petition.

For Petitioner : Mr.S.Saravana Kumar

For Respondents : Mr.C.Raghavan
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed challenging the order dated 05.11.2020 passed by the Court below dismissing the application filed for recalling PW15 for cross-examination.

2. The petitioner, who has been arrayed as A2, is facing trial before the Court below for a Charge under Section 302 IPC read with Section 34 of IPC. In this case, the husband of the petitioner has been arrayed as A1. The prosecution had examined 15 witnesses in this case. PW15, who is the Investigating Officer was examined in chief and he was not cross-examined and hence, an application came to be filed under Section 311 of Cr.P.C. for recalling PW15 for cross-examination. The said application was allowed and there was a direction to pay the batta to issue summons to the concerned witness.

3. In the meantime, the husband of the petitioner absconded and therefore, the case was split-up against the husband of the petitioner and numbered as SC. No.33 of 2020 on the file of the learned III Additional District cum Sessions Judge, Virudhachalam. The petitioner filed an application under Section 311 of Cr.P.C. for recalling PW15 for cross-examination and the said application was dismissed by the Court below. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.S.Saravana Kumar, learned counsel for the petitioner and Mr.C.Raghavan, learned Government Advocate (Crl. Side) appearing on behalf respondent.

5. The learned counsel for the petitioner submitted that PW15 is the Investigating Officer for whom the husband of the petitioner had earlier filed an application for recall and cross-examination. Thereafter, the husband of the petitioner absconded. The learned counsel further submitted that the case was taken care of by the husband of the petitioner and she did not take any independent decision at any point of time. Now that the husband has absconded, the petitioner had no other go except to file an independent application to recall PW15 for cross-examination. The learned counsel submitted that one last chance can be given to the petitioner to cross-examine PW15 and the petitioner is willing to comply with any conditions imposed by this Court.

6. Taking into consideration the facts and circumstances of the case and the peculiar circumstances under which the petitioner is placed due to her husband absconding and the case being split-up, this Court is inclined to give one last chance to the petitioner to recall PW15 for cross-examination. This witness is the Investigating Officer who had investigated the case and therefore, to ensure a fair trial, one last opportunity can be given to the petitioner to recall PW15.

7. In view of the above, the order passed by the Court dated 05.11.2020, is hereby set-aside. The petitioner is directed to pay a cost of Rs.3,500/- (Rupees three thousand five hundred only) before the Court below in SC.No.143 of 2015 on or before 20.12.2021. On such payment, a memo shall be filed before the Court below and the Court below shall fix a date for appearance of PW15 and the petitioner shall cross-examine PW15 on the same day of his appearance. If for any reasons, the petitioner fails to cross-examine PW15 on the date of appearance, the right of the petitioner to recall PW15 shall stand foreclosed. The cost paid shall be paid as a Batta to the Investigating Officer.

8. This Criminal Original Petition is allowed accordingly. There shall be a direction to the Court below to complete the proceedings in SC. No.143 of 2015 on the file of the learned III Additional District cum Sessions Judge, Virudhachalam, within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Tittakudi Police Station,
Cuddalore District.
2. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.
3. The III Additional District Cum Sessions Judge,
Virudhachalam.

+1cc to Mr.S.Saravana Kumar, Advocate Sr.1514

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