



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19941 of 2021
and Crl.M.P.No.10836 of 2021

Pandiyan @ Vaitheeswaran

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Mallur Police Station,
Salem District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 15.02.2021 made in Crl.M.P.No.367 of 2020 in S.C.No.45 of 2014 on the file of the Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.T.Balaji

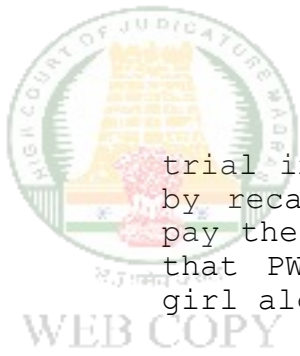
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed to set aside the order dated 15.02.2021 made in Crl.M.P.No.367 of 2020 in S.C.No.45 of 2014 on the file of the Sessions Judge, Mahila Court, Salem.

2.The petitioner is A2 in S.C.No.45 of 2014, who is facing trial for offence under Section 366 IPC had filed a petition in Crl.M.P.No.367 of 2020 under Section 311 Cr.P.C. to recall PW.1, PW.2 and PW.4. The trial Court by order dated 15.02.2021 had dismissed the same, against which the present Criminal Original Petition is filed.

3.The contention of the petitioner is that PW.1 and PW.2 were examined. The learned counsel who was conducting the case on behalf of the petitioner before the trial court was not well and unable to cross examine the said witnesses. The petitioner engaged another counsel and he needs to cross examine the above witnesses in order to disprove the prosecution case. The



trial in this case is not completed and no delay would be caused by recalling PW.1, PW.2 and PW.4. The petitioner is ready to pay the expenses. Further submitted that it would be sufficient that PW.1 and PW.4, who are the uncle and aunt of the victim girl alone are permitted to recall and cross examine them.

4.The learned Additional Public Prosecutor submits that PW.1 and PW.2 were examined in chief on 19.09.2016, thereafter, they were not cross examined by the petitioner/A2. Likewise, PW.4 was examined in chief on 02.01.2018 and she was not cross examined by the petitioner/A2. Though, on the particular day, the counsel appearing for the petitioner/A2 was unwell and the petitioner/A2 had engaged another counsel on 05.01.2018, the recall petition came to be filed only on 07.12.2020. The above said recall petition was filed after a lapse of three years. The trial Court had passed a well reasoned order not to be interfered with. Hence strongly objected the same.

5.Considering the rival submissions and on perusal of the materials, it is seen that PW.2 is the victim girl and she settled in Pollachi. As regards PW.1 and PW.4 i.e. the uncle and aunt of the victim girl are residing in Mallur, Salem District. The trial in this case is yet to be completed, the Investigating Officer is to be examined. In view of the same, this Court is inclined to recall PW.1 and PW.4 for the purpose of cross examination. The cross examination is to be completed on the date of appearance of PW.1 and PW.4, without asking further time and the petitioner is directed to pay a sum of Rs.2,500/- each to the witnesses for their expenses on the day of their appearance. The entire process is to be completed within a period of two weeks from the date of receipt of a copy of this order.

6.With the above observations, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court,
Salem.

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2.The Inspector of Police,
Mallur Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

+1CC to M/s.A.Thiyagarajan, Advocate SR.No.55631

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AK(CO)
B.VC(12/11/2021)