



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2021

CORAM :

THE HONOURABLE **Mrs. JUSTICE R. HEMALATHA**

Crl.O.P. (MD)No.1287 of 2021

1.Vijayan Muruganandam
2.C.Raja Sekara Muthaiah
3.S.Manimekalai
4.R.Yogeshwaran

... Petitioners

Vs.

The State rep., by
The Inspector of Police,
All Women Police Station,
Srirangam, Trichy District.
(Crime No.23 of 2019)

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order in Crl.M.P.No.1655 of 2020 in CC.No.2677 of 2020 on the file of the learned Judicial Magistrate/Additional Mahila Court, Tiruchirappalli dated 30.12.2020.

For Petitioners	: Mr.G.Karuppasamy Pandian
For Respondent	: Mr.S.Chandrasekar Additional Public Prosecutor
For Intervenor	: Mr.M.Mariappan

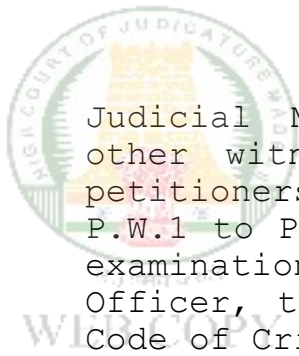
ORDER

The present petition is filed against the order dated 30.12.2020 passed by the learned Judicial Magistrate (Additional Mahila Court), Tiruchirappalli in Crl.M.P.No.1655/2020 in CC.No.2677 of 2020.

2.The respondent Police filed a final report against the present petitioners in CC.No.2677 of 2020 before the learned Judicial Magistrate (Additional Mahila Court), Tiruchirappalli for the alleged offences punishable under Sections 498A and 506(i) of the Indian Penal Code and Section 4 of Dowry Prohibition Act, 1961. After framing of charges, the learned Judicial Magistrate (Additional Mahila Court), Tiruchirappalli posted the case for trial on 04.11.2020. The defacto complainant was examined as P.W.1. The prosecution also marked as Ex.P.1 to Ex.P.6. However, the learned counsel for the accused did not cross-examine her. Subsequently, other witnesses namely Krishnamoorthy and Malayali were examined on 04.11.2020 as P.W.2 and P.W.3 respectively and the petitioners did not avail the opportunity to cross-examine them.

3.It is also seen from the orders passed by the learned

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Judicial Magistrate (Additional Mahila Court) that subsequently other witnesses were also examined as P.W.6 and P.W.7 and the petitioners neither cross-examined nor filed a petition to recall P.W.1 to P.W.7, who were cross-examined on earlier occasion. After examination of all the witnesses including the Investigating Officer, the petitioners filed a petition under Section 311 of the Code of Criminal Procedure to recall P.W.1 to P.W.7 alone.

4.Mr.M.Mariappan, learned counsel intervened on behalf of the defacto complainant and would submit that though sufficient opportunities were given to the petitioners to cross-examine the witnesses, they did not avail the opportunity.

5.Mr.S.Chandrasekar, learned Additional Public Prosecutor, who accepts notice on behalf of the first respondent drew the attention of this Court to para Nos.10,11 and 12 of the orders passed by the learned Judicial Magistrate (Additional Mahila Court), wherein it has been held thus:-

"10.Eventhough A1 and the learned counsel were present while P.W.1 was examined in chief, they were not ready to cross examine P.W.1. Since an opportunity has been given for cross examination and the accused did not turn up for cross examining P.W.1, the opportunity to cross-examine P.W.1 was closed.

11.It is pertinent to note that on 04.11.2020, the other witnesses namely Krishnamoorthy and Malayali were present and examined as P.W.2 and P.W.3 respectively. Since, the petitioners/accused were not ready to cross examine P.W.2 and P.W.3 also, the opportunity was closed. Threreafter, the case was adjourned for examination of further witnesses on 07.11.2020.

12.Even on 07.11.2020 two witnesses namely Thamaraiselvi and Prabhu were present upon the receipt of the witness summons. Even at that time there is no petition to recall P.W.1 to P.W.3 was filed by the petitioners/accused. Thereafter, the witnesses those were present were examined as P.W.4 and P.W.5 respectively. Since the petitioners/accused are not ready to cross examine P.W.4 and P.W.5 the opportunity was closed."

6.A perusal of the orders passed by the Magistrate clearly shows that the counsel for the petitioners/accused did not want to cross-examine the witnesses, when they were in the witness box and they filed a petition in Crl.M.P.No.1655 of 2020 only to recall P.W.1 to P.W.7, despite the fact that the Investigating Officer was examined as P.W.11. It is also seen from the orders that the petitioners/accused did not cross-examine any of the witnesses, when



they were present before the Court and the Court should not deal with Section 311 of the Code of Criminal Procedure in casual manner and call the witnesses to Court for cross-examining repeatedly.

7.The learned Judicial Magistrate (Additional Mahila Court), Tiruchirappalli has passed detailed orders and this Court does not find any reason to interfere with the findings recorded by the learned Judicial Magistrate. Accordingly, the Criminal original Petition is dismissed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate/Additional Mahila Court, Tiruchirappalli.
- 2.The Inspector of Police,
All Women Police Station,
Srirangam, Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KB(26.03.2021) 3P 4C