



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 08.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.3880 of 2021

and

Crl.MP(MD)No.2155 of 2021

WEB COPY

J.Ramesh

... Petitioner/Petitioner/Sole Accused
Vs.

1.The Inspector of Police,
Muthiahpuram Police Station,
Muthiahpuram,
Thoothukudi District,
Crime No.865 of 2011.

... Respondent/Respondent/
Complainant

2.Subbulakshmi

... Respondent/Respondent/Defacto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.II, Thoothukudi, in Cr.MPNo.3224 of 2018 in C.C.No.31 of 2012, dated 26.07.2018.

For Petitioner : Mr.G.RadhaKrishnan
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This petition has been filed to quash the order passed by the learned Judicial Magistrate No.II, Thoothukudi, in Cr.MPNo.3224 of 2018 in C.C.No.31 of 2012, dated 26.07.2018.

2. The petitioner is the sole accused before the Trial Court, who is facing trial before the Court below for the offences under Sections 448 & 506 (ii) IPC and Section 4 of Tamil Nadu Woman Harassment Act. The case is of the year 2012. P.W.1 & P.W.2 were examined in chief on 09.01.2014. The petitioner has omitted to cross-examine the witnesses. So, re-call petition in Cr.MPNo.3224 of 2018 in C.C.No.31 of 2012 has been filed by him. Which, came to be dismissed by the learned Judicial Magistrate No.II, Thoothukudi, dated 26.07.2018, observing that after a lapse of four years, the petition came to be filed for re-calling witnesses. Against which, the petitioner preferred a Criminal Revision Petition in Crl.R.C.No.6 of 2019 before the learned Principal Sessions Judge, Thoothukudi. Which also came to be dismissed, on 03.08.2020. Challenging the same, this petition is filed.

3. The learned counsel for the petitioner would submit that due



to personal inconvenience of the petitioner's counsel, he was unable to cross examine the witnesses and one more opportunity may be given to the petitioner to cross-examine P.Ws.1 & 2 to prove his case.

4. Heard both sides.

WEB COPY

5. It is seen that without cross examining the material witnesses, the right of fair trial will not be possible. At that time, the petitioner and his counsel must be ready and co-operate with the Trial Court to complete the trial process. Waiting for four years, cannot be considered to be reasonable. But, however, this petition is liable to be allowed, on the ground that unchallenged testimony of P.W.1 & P.W.2, may lead to miscarriage of justice

6. in the facts and circumstances of the case, I am of the considered view that one more opportunity may be given to the petitioner to cross-examine the witnesses.

7. The purpose of cross-examination has been clearly enunciated by the Hon'ble Supreme Court in **Kartar Singh Vs State of Punjab** reported in **(1994) 3 SCC 569**. So, the points, which have been pointed by the Hon'ble Supreme Court is extracted hereunder:-

"Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;

(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;

(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness:

and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

8. So, this position is also been pressed in the case of **Jayendra Vishnu Thakur Vs.State of Maharashtra** reported in **(2009) 7 SCC 104** in the following words:-

"A right to cross-examine a witness, a part from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section

138 of the Evidence Act confers a right on the



adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But, indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion."

9. So, in the light of the above, I am of the considered view that one last opportunity may be given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Judicial Magistrate No.II, Thoothukudi, in Cr.MPNo.3224 of 2018 in C.C.No.31 of 2012, dated 26.07.2018, is set aside with the following conditions:-

(i) The petitioner must deposit Rs.2000/- (Rupees Two Thousand Only) as cost to the each witness before the Trial Court within 15 days from the date of resumption of normal work.

(ii) The Trial Court may fix a date for cross examination of the witnesses and shall send summons to the witnesses.

(iii) On the date fixed, the petitioner must cross examine the witnesses without fail. If any failure is noticed, then the right of cross examination of the witnesses will be lost.

10. With the above direction, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 No.II,
Thoothukudi.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Muthiahpuram Police Station,
Muthiahpuram,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.RADHAKRISHNAN, Advocate (SR-21906[F] dated
09/07/2021)

Crl.O.P. (MD)No.3880 of 2021
and
Crl.MP (MD)No.2155 of 2021
08.07.2021

CM(CO)
RD(16.07.2021) 4P 5C