



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD).No.5086 of 2021

and

Crl.MP(MD).No.2911 of 2021

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R.Manohar Raj

...Petitioner/Petitioner/
Accused No 1.

Vs.

The State through
The Sub Inspector of Police,
Srirangam All Women Police Station,
Trichy. (Cr. No. 17 of 2018)

...Respondent/Respondent/
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to set aside the order in Crl.MP(MD).No.321 of 2021 in C.C.No.176 of 2018 dated 26.04.2021 passed by the learned Judicial Magistrate, Additional Mahila Court, Tiruchirappalli by allowing this Criminal Original Petition.

For Petitioner : Mr.T.A. Punitham

For Respondent : Mr.R.Srinivasan,

Government Advocate (Crl.Side).

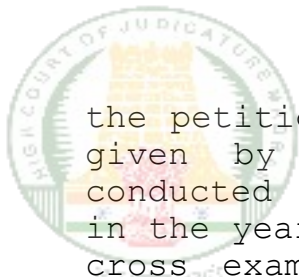
ORDER

This Criminal Original Petition is filed seeking to set aside the order passed by the learned Judicial Magistrate, Additional Mahila Court, Tiruchirapalli in Crime No.321 of 2021 in C.C.No.176 of 2018, dated 26.02.2021.

2. The case of the petitioner is that he is facing criminal prosecution for the offences under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 67 of Information Technology Act, 2000 in C.C.No.176 of 2018 pending on the file of learned Judicial Magistrate, Additional Mahila Court, Tiruchirappalli. Hence, he filed the Criminal Original Petition.

3. The learned counsel for the petitioner would submit that, due to his ill-health, he could not cross examine the witnesses and hence, the petition was dismissed. Later another application was filed and the same was also dismissed on the ground that the petitioner is continuously adjourning the matter.

4. The learned counsel for the petitioner would submit that he was admitted to an eye hospital for treatment. The sole ground on which



the petition came to be dismissed is that no proper reason has been given by the petitioner. Further, the chief examination was conducted in the year 2012, but the recall petition was filed only in the year 2019. So due to the paucity of time, it is not proper to cross examine the witness now. The petitioner is facing charges under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2002 and under Section 67 of the Information Technology Act, 2000. It has been held by the Hon'ble Supreme Court that if the petitioner is not permitted to cross examine the witnesses, it will be put to great hardship to the petitioner.

5. 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 raised 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."

6. 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 threabout. 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."

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7. Even though, the petition for recall the witnesses has been filed after a long period of time, this court, considering the facts and circumstances of the case, directs that the petitioner may be permitted to cross examine the witnesses on payment of Rs.1,000/- to each of the witnesses and the same shall be deposited within 15 days from the date of receipt of a copy of this order before the trial Court. On such deposit, the trial Court shall fix one or two days for examining all the witnesses. The petitioner must cross examine all the witnesses on the dates fixed by the trial Court without fail. If any violation is noticed then the right to further cross examine the witnesses will be forfeited.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

kmm

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, Tiruchirapalli.
2. The Sub Inspector of Police,
Srirangam All Women Police Station,
Trichy.



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

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ES (CO)
LR (06.08.2021) 4P 4C