



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 06.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.7943 of 2019

T.Shefro Jaccab ... Petitioner/Petitioner/Accused-1

Vs.

1.The State through
Sub-Inspector of Police,
All Womens Police Station,
Kuzhithurai,
Kanyakumarai District.
(Crime No.6/2014)

... Respondent/Respondent/
Complainant

2.E.Linshiya ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the order, dated 08.12.2017, passed in Crl.M.P.No.5261 of 2017 in C.C.No.114 of 2014 on the file of the Judicial Magistrate, Padmanabhapuram and to set aside the same and permit the petitioner to cross examine P.W.1 to P.W.7.

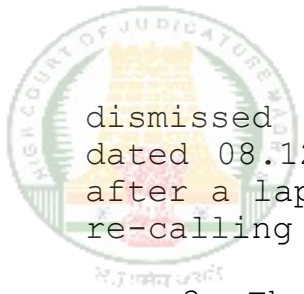
For Petitioner: Mr.S.C.Herold Singh
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.
For R2 : Mr.S.Titus

ORDER

This petition has been filed to quash the order, dated 08.12.2017, passed in C.M.P.No.5261 of 2017 in C.C.No.114 of 2014, on the file of the Judicial Magistrate, Padmanabhapuram and permit the petitioner to cross examine P.W.1 to P.W.7.

2. The petitioner is facing trial before the Court below for the offences under Section 498 (a), 406, 452, 354, 323 of IPC 3, 6 of DP Act & 4 of TNPWH Act, 2001 @ under Section 498 (a), 354, 406, 452, 323, 294 (b), 506 of IPC and 3, 3 of DP Act & 4 of TNPWH Act, 2002. It is a matrimonial dispute. P.W.1 was examined on 22.07.2016. P.Ws.2 & 3 were examined on 10.11.2016, P.W.s.4 & 5 were examined on 02.01.2017. P.W.6 was examined on 17.02.2017 and P.W.7 was examined on 23.05.2017. The petitioner failed to cross-examine the witnesses.

So, re-call petition has been filed by him, Which, came to be



dismissed by the learned Judicial Magistrate, Padmanabhapuram, dated 08.12.2017, observing that the case is of the year 2014 and after a lapse of more than a year, the petition came to be filed for re-calling witnesses.

3. The learned counsel for the petitioner would submit that it is a matrimonial dispute and a divorce petition has also been initiated before the Family Judge, Kanyakumari at Nagercoil in I.D.O.P.No.181 of 2019 and so, he is not in a position to cross-examine the witnesses on the date of chief examination and a copy of I.D.O.P was also circulated in the additional typed set of papers, Wherein, it has stated that the wife and the husband have decided to dissolve the marriage mutually. But, later, it came to be withdrew on 06.08.2019. Later, I.D.O.P.(MD)No.340 of 2019 has been filed by the defacto complainant, against the husband before the same Court and that came to be allowed, on 17.03.2020. Hence, he prayed this Court to give one more opportunity to cross-examine P.W.s. 1 to 7.

4. Heard both sides.

5. The reason for the non-cross-examination of the witnesses on the date of chief examination, it appears that it is not properly explained by the petitioner. After a lapse of several years, the petition came to be filed. In view of the subsequent development, cross-examination of P.Ws.1 to 7 is necessary.

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 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."

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 thereof. 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 is given to the petitioner. So, this petition is liable to be allowed and the order passed by the learned Judicial Magistrate, Padmanabhapuram, in Crl.M.P.No.5261 of 2017 in C.C.No.114 of 2014, dated 08.12.2017, is quashed with the following conditions:-

(i) The petitioner must deposit Rs.1000/- (Rupees One Thousand Only) as cost to the each witness before the Trial Court within 15 days from the date of receipt of copy of this order.

(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 forfeited.

10. With the above direction, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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, Padmanabhapuram,
Kanyakumari District.
- 2.The Sub-Inspector of Police,
All Womens Police Station,
Kuzhithurai,
Kanyakumarai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-21588[F]
dated 07/07/2021)

Crl.O.P. (MD)No.7943 of 2019
06.07.2021

PK(CO)
TR(14.07.2021) 4P 5C