





2.Ashiq Illahi

3.Shafeena

4.S.M.B.Abul Barakash

5.S.M.B.A.Rifyayaa

... Respondents/Respondents

**Prayer in Crl OP(MD)No.17018 of 2019**

Criminal Original Petition is filed under Section 482 Cr.P.C., to withdraw the proceedings of M.C.No.80 of 2014 on the file of the Additional Mahila Court, Trichy, and transferring the same to the designated Special Court constituted at Trichy District as per the G.O.(Ms)No.246 dated 21.05.2019 and the Letter No.41166/Cts.VIA/2019-I dated 28.08.2019.

**Prayer In Crl.OP(MD).1497 of 2019:-**

Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records and set aside the order passed in Cr.MP.No.5286 of 2016 in MC No. 80/2014 on the file of the Additional Mahila Court, Trichirappalli.

For Petitioner : Mr.V.Illanchzian

For Respondents : Mr.C.Dhanaseelan for R1

**C O M M O N O R D E R**

**Crl.O.P. (MD)No.12211 of 2019**

This petition is filed seeking to set aside the order in Crl.MP.No.2724 of 2016 in C.C.No.121 of 2016 dated 13.08.2019 on the file of the learned Judicial Magistrate Additional Mahila Court, Tiruchirappalli and consequently recall P.W.1 and P.W.2 and permit the petitioner to mark the document before the Court.

**2. Case of the prosecution in brief:-**

The petitioner is the defacto complainant in the above said criminal case. It was registered on the basis of the complaint given by the petitioner, which was registered for the offences punishable under Sections 498(A), 294(b), 406 and 495 of IPC r/w Section 4 of Dowry Prohibition Act.

3. When the trial proceedings were going on, the Inspector of Police, All Women Police Station, Tiruverambur, Trichy, filed Crl.M.P.No.2724 of 2016 seeking an order of recall P.W.1 under Section 311 Cr.P.C, for the purpose of marking certain documents which are mentioned in the petition. After hearing the parties, the Trial Court, by the order dated 13.08.2018, dismissed the petition on various grounds. Challenging the same, this petition is filed seeking to set aside the order.

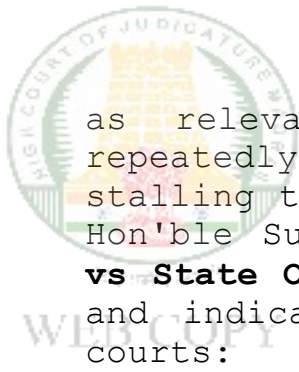


4. The grounds, on which, this petition is filed is that the petitioner is the victim and also the defacto complainant and without giving opportunity, the petition came to be dismissed by the Trial Court. On 17.04.2016 itself, the petitioner sent 30 documents to the Investigating Officer for the purpose of taking the same into account, during the course of investigation. These documents are already produced in M.C.No.80 of 2014 before the very same Court.

5. Heard both sides.

6. The case has been registered for the offences punishable under Sections 498(A), 294(b), 406, 495 IPC r/w Section 4 of Dowry Prohibition Act. During the course of trial proceedings, as mentioned above, the complainant the Inspector of Police, All Women Police Station, Thiruverumbur filed the above said petition to recall P.W.1 and P.W.2 to mark the documents mentioned in the petition. The trial court, after making out elaborate enquiry, dismissed the petition on the ground that the documents sought to be marked in the petition for which P.W.1 and P.W.2 were sought to be recalled are not the relevant documents and also held that those documents, alleged to have been given to the complainant namely, the Investigating Officer, during the course of investigation have not been forwarded along with the final report and consequently, even if the documents were produced before the Investigating Officer during the course of investigation without permission from the court those documents cannot be sought to be produced and more over relevancy of those documents were discussed in detail. So challenging the same, this petition has been filed.

7. As stated above, elaborate argument has been advanced by the learned counsel for the respondent taking this Court through each and every document now sought to be produced to show that though the documents are not relevant for the issue to be decided. When this sort of argument advanced before me, I pointed out to the learned counsel for the respondent to the effect that at the time of deciding the petition filed under Section 311 Cr.P.C, relevancy and admissibility of those documents need not be discussed at length. But however, he would be very firm on his argument to the effect that unless those issue of relevancy and admissibility are decided or discussed, the petition filed under Section 311 Cr.P.C cannot be decided. But those arguments, in my considered view, do not reflect the correct preposition of law. When this sort of petition is filed, the trial courts are facing trouble for many years with regard to deciding the desirability of the documents that sought to be produced. It is usual for the opposite side to make an objection when a particular document is admitted in evidence with regard to the admissibility and as well



as relevancy of those documents. Challenging those orders, repeatedly revisions were filed before the High Courts, thereby stalling the further progress of the cases. Finding this issue the Hon'ble Supreme Court in the judgment in **Bipin Shantilal Panchal vs State Of Gujarat and another** reported in **2001(3) SCC page No.1** and indicated the following course to be adopted by the trial courts:

"It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all



other objections the procedure suggested above can be followed.)

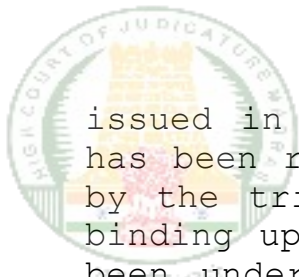
The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses".

8. Pointing out that this was also created problems, a *suo motu* Writ Petition in W.P.No.1 of 2017 was initiated by the Hon'ble Supreme Court **to issue certain guidelines regarding Inadequacies and Deficiencies in criminal trials Vs. the State of Andra Pradesh and others.**

9. A request was made by the Amicus Curie to re-consider the above said direction. Taking note of the shortcoming of the abovesaid issue, the Hon'ble Supreme Court has issued directions in the following line and a draft code has also enclosed along with the order copy for being circulated and the High Courts were directed to frame proper rules and has issued directions. One among the direction is that the courts must undertake a pretrial between the accused and the complainant with regard to the witnesses and documents to be produced. After that, they may undertake the trial process and the direction issued by the Hon'ble Supreme Court in **Bipin Shantilal** case has been modified to the following effect:

'It was directed that the Presiding Officer should decide the objections to question during the course of proceedings or at the end of deposition of concerned witness'.

10. According to the Hon'ble Supreme Court, this will result in de-cluttering the record and also have the salutary effect of preventing frivolous objections. In given cases, repeated objections have been taken, the remedy of costs, depending upon the nature of objections and the proclivity of the line of cross

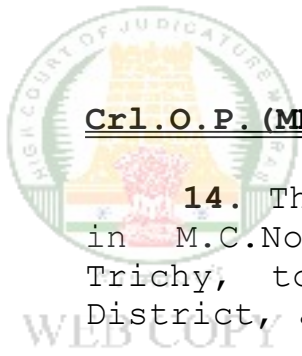


issued in **Bipin Shanthilal** case stand modified. So this judgment has been rendered on 12<sup>th</sup> April 2021, which is after decision made by the trial court. Since this judgment of the Supreme Court is binding upon all the Subordinate Courts, a long exercise that has been undertaken by the trial court in taking up each and every document at the pre-admission stage and deciding the same as to its admissibility and relevancy in my considered view is not proper. So the admissibility and relevancy can be decided at the time of admitting the documents during evidence.

**11.** Going through the records, this Court finds that it is a consistent case of the defacto complainant that those documents have been sent to the Investigating Officer during the course of investigation, but, he failed to produce the same along with the final report and on that ground, this petition came to be filed. How the case of the accused is going to be prejudiced by those documents is not understandable. He got the right of cross examination during the relevant time but when the relevancy of the documents are decided in the pre admission stage, it may not be fair and just.

**12.** No doubt, some of the documents, on the face of it, not seems to be not relevant, but, as I stated earlier, for the reasons stated above, I am of the considered view that the order passed by the trial court on the technical ground is not proper. Even without recording the evidence, the trial court has concluded that the sending of the above said documents to the Inspector of Police namely, the Investigating Officer through Registered Post is disproved is also not proper. Technicalities on producing the documents should not stand in the way of a fair trial. It is a long standing dispute between the husband and wife. Even the matter was referred to mediation by this Court and the same could not succeed because of the difference of opinion. The case is of the year 2016. So even though attempts have been made on the side of the prosecution belatedly, I am of the considered view that in the interest of fair trial P.W.1 and P.W.2 may be recalled for the purpose of marking those documents and admissibility and relevancy of the documents have to be decided as mentioned above.

**13.** More over, the issue of the court to recall a witness at any time is well recognized. The only hallmark is that the recall is required for the purpose of rendering a fair justice. How far those documents are going to help the case of the prosecution to prove the guilt cannot be matter for consideration at this stage. Hence, it is a matter consideration at the time of arguments and conclusion of the trial. So this petition is liable to be allowed. Accordingly, the same is allowed.



**Crl.O.P. (MD)No.17018 of 2019**

**14.** This petition is filed seeking transfer of the proceedings in M.C.No.80 of 2014 on the file of the Additional Mahila Court, Trichy, to the designated Special Court constituted at Trichy District, as per G.O.(Ms)No.246, dated 21.05.2019.

**15.** The grounds on which, this petition is filed is that the petitioner is the complainant/petitioner in C.C.No.80 of 2014, which was filed for maintenance. The petitioner is a physically challenged person. By taking advantage of the physical disability of the petitioner, the first respondent and the other respondents cheated lot of money from her as dowry. Since there was harassment at the hands of the respondents, a criminal case has also been pending before the very same Court. The first respondent was also got married. The petitioner suffering from 18% of disability. She is entitled to get benefits as per G.O.(Ms)No.246, dated 21.05.2019. So, the matter must be heard only by the Special Court and here, the Principal District Court is the designated Court to try such proceedings filed by the disabled persons. Hence, this petition.

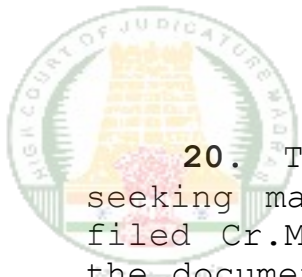
**16.** Heard both sides.

**17.** The petition has been filed in the year 2014 even after a lapse of 7 years which has not been concluded. A belated attempt has been made by the petitioner to the effect that she being a disabled person as per the rights of the Right of Persons with Disabilities Act, 2016 and in pursuance of the G.O.Ms.NO.246 dated 21.05.2019, a case must be transferred to the Principal District Judge Court is absolutely without any substance. The grievance which now she is experienced before the trial court is not properly explained. Section 12 of the said Act is not applicable to the case of the petitioner. So on that basis the question of transferring the trial does not arise.

**18.** When this was pointed out by this Court at the time of admission, the learned counsel for the petitioner submitted that the court may pass appropriate orders. I am of the considered view that this petition is wholly misconceived one. It is not the case of the petitioner that no facility is provided to her in the trial court. So this petition deserves dismissal. Accordingly, Crl.O.P (MD)No.17018 of 2019 is dismissed.

**Crl.O.P (MD)No.1497 of 2021:**

**19.** This petition is filed to set aside the order passed in Cr.M.P. No.5286 of 2016 in M.C.No.80 of 2014 on the file of the Additional Mahila Court, Trichirappalli.



**20.** The petition is the wife in the main petition filed seeking maintenance. During the pendency of the proceedings she filed Cr.M.P.No.5286 of 2016 under Section 91 of Cr.P.C to send the documents from the the concerned department for the purpose of trial and that came to be dismissed by the trial court on 15.10.2018, stating that it is a belated attempt on the part of the petitioner and there is no relevancy also. It is also pointed out that in spite of specific direction issued by this Court in Crl.O.P(MD)No.8564 of 2015, it could not be concluded because of the non cooperation of the parties.

**21.** Heard both sides.

**22.** The case has been filed in the year 2014. Even after lapse of 7 years, it has not been concluded as mentioned earlier because of the non cooperation of the parties even a specific direction is issued in Crl.O.P(MD) No.8564 of 2015 it could not be concluded. When the matter was taken up on 19.06.2018, this petition came to be filed defectively and that was returned. Later it has been re-presented noting the conduct of the petitioner in dragging on the proceedings the trial court dismissed the petition. The only point that should be decided in the maintenance petition is as to whether the wife is not in a position to maintain herself and the husband is lawfully wedded the wife. For deciding this simple issue, the matter has been dragging on for 7 years. Even though the relevancy of the document has got to be summoned and discussed in this matter, I am of the considered view that the petitioner is engaged in dragging on the proceedings for no purpose having sought maintenance she ought to have cooperated with the trial court to complete the proceedings within a reasonable time. So the attempt made on the part of the petitioner is not proper and is also in clear violation of the order passed by this Court in Crl.O.P(MD)No.8564 of 2015. Therefore the order passed by the trial court deserved to be confirmed and no interference is required. So this petition is liable to be dismissed. Accordingly this petition is dismissed.

Sd/-

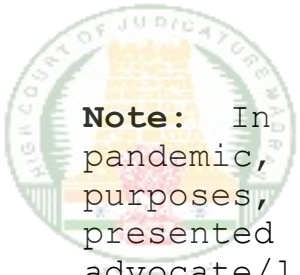
Assistant Registrar (Crl)

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/ /2021

Sub Assistant Registrar(CS)

CM/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.

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To

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

+1CC to Mr.K.Prabhu, Advocate(SR-30065)

**Crl.O.P. (MD) Nos.12211, 17018 and 1497 of 2019**

**and**

**Crl.MP(MD) Nos.7663, 10084 and 735 of 2019 & 1735 of 2021**

**22.09.2021**

RK (01/11/2021) 9P 6C