



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5379 of 2022

Rajkumar

... Petitioner

Vs.

State rep by,
The Inspector of Police,
Vanur Police Station,
Villupuram District.

... Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Crl.M.P.No.861 of 2021 in C.C.No.07 of 2015 on the file of Learned Judicial Magistrate, at Vanur, Villupuram District and set aside the order dated 05.10.2021 in C.C.NO. 07 of 2021.

For Petitioner : Mr.M.R.Krishnamoorthy

For Respondent : Mr.V.Megananthan,
Government Advocate (crl.side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 05.10.2021 in C.C.NO. 07 of 2021 on the file of Learned Judicial Magistrate, at Vanur, Villupuram District.

2.Learned counsel for the petitioner would submit that the petitioner is an accused facing trial in C.C.No. 07 of 2015 for the offences under Section 294, 332 & 323 of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 1998.

3.In this case, PW1 to PW4 are crucial witnesses and their evidence is necessary and essential for arriving at just decision of the case. PW1 to PW4 were examined in chief on 28.04.2015. At the relevant point of time, the Petitioner was handicapped without certain vital details and he was unable to cross examine them. The petitioner was under the impression to recall the at the final stage. Thereby the Petitioner had filed



an application for recall PW1 to 4 on 05.10.2021. The learned trial Judge, following the mandate of the Hon'ble Apex Court in the case Vinoth Kumar Vs. State of Punjab had dismissed the application. He would further submit that though there had been serious lapses on the side of the petitioner, he would submit that the cross examination of the witnesses is very much essential or else it would amount to the case of no defence, resulting in grave prejudice to the petitioner. He would further submit that if one chance is given, the petitioner will cross examine the witnesses on the same day of their appearance. He would reiterate that the petitioner may be permitted to recall and cross examine PW1 to PW4 subject to cost and terms.

3. Learned Government Advocate would submit that PW1 to PW4 were examined in chief on 28.04.2015. The Trial Court had rightly following the dictum in Vinoth Kumar Vs. State of Punjab, had dismissed CrI.M.P.No.861 of 2021 on 05.10.2021.

4. Heard both sides and perused the materials available on record.

5. No doubt, in this case, the Trial Judge had rightly following the mandate of the Hon'ble Apex Court in the case of Vinod Kumar Vs. State of Punjab reported in 2015 (3) SCC 220 had dismissed the petition. I do not find any infirmity in the order passed by the learned trial Judge.

6. Though, there had been serious lapses on the side of the petitioner, if the witnesses are not recalled and if the petitioner is not given an opportunity to cross examine the witnesses PW1 to PW4, it would amount to the case of no defence. This Court of the opinion that one chance may be given and the petitioner may be permitted to recall and cross examine the witnesses subject to terms and cost.

7. In view of the above, impugned order passed by the learned Judicial Magistrate, Vanur, Villupuram District dated 05.10.2021 stands set aside. The petition to recall PW1 to PW4 stands allowed on condition that the petitioner shall deposit an amount of Rs.8,000/- before the Trial Court within a period of one week from the date of receipt of a copy of the order. On such deposit, the Trial Court shall fix the date for the appearance of PW1 to PW4 and the petitioner shall cross examine them on the same day of their appearance. In the event of petitioner failing to cross examine the witnesses on the day of their appearance, the petitioner shall lose his chance of cross examining the witnesses. The Trial Judge shall disburse the amount of Rs.2,000/- to each of the witnesses on the day of their appearance.



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8. With this above direction, this Criminal Original Petition stands disposed of.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

shk/sai

To

1.The Inspector of Police,
Vanur Police Station,
Villupuram District.

2.The Public Prosecutor,
High Court of Madras.

Copy To

The Judicial Magistrate,
Vanur, Villupuram District.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.15692

Cr1.O.P.No.5379 of 2022

GPL (CO)
GMY (24/03/2022)