



Crl.O.P.No.19949 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.19949 of 2023
and Crl.M.P.No.13546 of 2023**

V.M.Gokul

.. Petitioner

Versus

**The State through,
Inspector of Police,
15, Velampalayam,
Police Station, Tirupur.**

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.3728 of 2022 in C.C.No.42 of 2017, dated 30.06.2022 pending on the file of the Additional Mahila Court, Tiruppur.

For Petitioner : Mr.N.Umapathi

**For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor**

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C., to recall P.W.1 to P.W.6 for cross-examination.



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2. The petitioner is facing trial before the Court below for alleged offences under Sections 498A and 506(ii) of I.P.C. P.W.1 to P.W.6 were examined in chief in the year 2016 itself. These witnesses were not cross-examined. During the year 2022, an application came to be filed to recall P.W.1 to P.W.6 for cross-examination. The Court below dismissed the application by order, dated 30.06.2022. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.N.Umapathi, learned Counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondent.

4. On carefully going through the order passed by the Court below, this Court did not find any illegality or infirmity in the order. The petitioner has not given any explanation as to why no application was filed to recall the witnesses for a period of five years. That apart, even the present petition has been filed after nearly an year after the Court below passed the order dismissing the application. Therefore, the petitioner does not seem to be conducting the case vigilantly. Therefore, the petitioner cannot now come



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and plead that an opportunity must be given to him to defend his case. A person who wants to defend himself must also be vigilant and must exercise such a right on time without procrastinating the same. The learned Additional Public Prosecutor submitted that the case is now at the stage of examination of L.W.12, L.W.13 and L.W.15 on 22.09.2023. The learned Counsel for the petitioner submitted that the petitioner may be permitted to atleast recall P.W.2 in this case, failing which, the petitioner will completely lose his right of defence.

5. Taking into consideration the facts and circumstances of the case and also of the fact that the trial is pending, this Court is inclined to modify the order passed by the Court below insofar as P.W.2 is concerned who is the wife of the petitioner. On all the other respects, the order passed by the Court below is confirmed.

6. This Criminal Original Petition is disposed off in the following terms:-



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(a) The petitioner is directed to deposit costs of Rs.5,000/- to the account of C.C.No.42 of 2017 on the file of the Additional Mahila Court, Tiruppur on or before 11.09.2023;

(b) The Court below is directed to fix a date for the appearance of P.W.2 and on the date of appearance of P.W.2, the cross-examination must take place on the side of the petitioner and it has to be completed on the same day. On the appearance of P.W.2, the costs shall be paid to her;

(c) If the petitioner fails to cross-examine P.W.2 on the date of her appearance, the petitioner will lose the right to recall P.W.2 in future;

(d) The Court below is directed to complete the proceedings in C.C.No.42 of 2017 within a period of three months from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petition is closed.

01.09.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

Note : Issue order copy on 05.09.2023.

To



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1. The Additional Mahila Court,
Tiruppur.

2. The Inspector of Police,
15, Velampalayam Police Station,
Tirupur.

3. The Public Prosecutor,
High Court of Madras.



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N.ANAND VENKATESH, J.

grs

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