



Crl.O.P.(MD)No.14857 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14857 of 2024
and
Crl.M.P.(MD)No.9309 of 2024

Thamieem Ansari Sha

... Petitioner

Vs.

Stat represented by
Sub-Inspector of Police,
All Women Police Station,
Pudukkottai.
(Crime No.2 of 2018)

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records and set aside the impugned order dated 15.07.2024 passed in M.P.No.4 of 2024 in C.C.No.32 of 2019 on the file of the Judicial Magistrate Level, Additional Mahila Court, Pudukkottai.

For Petitioner : Mr.I.Abdul Basith

For Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition is directed against the order dated



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15.07.2024 passed in M.P.No.4 of 2024 in C.C.No.32 of 2019 on the file of the Judicial Magistrate Level, Additional Mahila Court, Pudukkottai, dismissing the petition filed under Section 311 Cr.P.C.

2. The petitioner is facing the case in C.C.No.32 of 2019 for the offences under Sections 498(A), 406 and 506(1) IPC and Section 4 of Dowry Prohibition Act.

3. It is seen from the records that P.W.1 and P.W.2 were examined on 27.10.2022, P.W.3 was examined on 31.03.2023 and P.W.4 was examined on 31.05.2024 and that the above petition came to be filed in 2024 to recall P.W.1 to P.W.3 and P.W.7 but the learned trial Judge has observed that no witness has been examined as P.W.7. At this juncture, the learned counsel appearing for the petitioner would submit that instead of P.W.4, they have wrongly mentioned as P.W.7.

4. No doubt, there was no cross-examination for more than two years with respect to P.W.1 and P.W.2 and one year with respect to P.W.3. But the fact remains that the above petition was filed for the



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purpose of cross examination itself and not for further cross-examination.

5. Considering the facts and circumstances of the case and also the fact that the witnesses sought to be recalled were not at all cross examined and also taking note of the fact that the petitioner is facing trial for the offences under Sections 498(A), 406 and 506(1) IPC and Section 4 of Dowry Prohibition Act, this Court is of the clear view that the petitioner should be given one more opportunity to cross examine the witnesses. But at the same time, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine the witnesses on the day, when the witnesses are produced before the Court and if for any reason, the petitioner fails to cross examine the said witnesses on that particular day, then he will forfeit his rights to cross examine them.

6. In the result, the Criminal Original Petition is allowed and the impugned order, dated 15.07.2024 in M.P.No.4 of 2024 in C.C.No.32 of 2019 on the file of the Judicial Magistrate Level, Additional Mahila Court, Pudukottai, is set aside and the petition to recall the witnesses is



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allowed on payment of cost of **Rs.10,000/- (Rupees Ten Thousand Only)** to the credit of Madurai Bench of Madras High Court Advocates Welfare Fund [Indian Bank High Court Branch, Madurai, Current Account No.7087208431, IFSC IDIBI000H040] within a period of one week from the date of receipt of copy of this order and on payment of process fee and batta to the said witnesses and on further condition that the petitioner side should cross examine the witnesses whenever the witnesses are produced before the Court and in case of the petitioner's failure to cross examine the particular witnesses, then he will forfeit his rights to cross examine the witnesses. The trial Court is directed to summon the said witnesses for the purpose of cross examination and complete the examination of the said witnesses within one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

05.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm



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To

- 1.The Judicial Magistrate Level,
Additional Mahila Court, Pudukottai.
- 2.The Sub-Inspector of Police,
All Women Police Station,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
Crl.O.P.(MD)No.14857 of 2024

Dated: 05.09.2024