



1 of 8

[IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.14241 of 2023

Mrs.K.Bhuvaneswari

.. Petitioner

vs.

1.Mr.Kuppusamy

2.Mr.Chinnadurai

3.Mrs.Mallika

4.Mr.Arumugam

5.Velmurugan (died)

6.M.Gunasekaran

7.The Station Incharge Officer

All Women Police Station

Neyveli

Cuddalore District.

(Crime No.7 of 2014)

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 4.5.2023 in Crl.MP.No.2065 of 2022 in Spl.SC.No.115 of 2022 on the file of the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act at Cuddalore.

For Petitioner : Mr.S.Anantha Narayanan
Senior Counsel
for Mr.Udhayakumar

For Respondents : Mr.C.D.Johnson
for R1

Mr.A.Gopinath
Government Advocate (Crl. Side) for R7



ORDER

This criminal original petition has been filed challenging the Order passed by the Court below dismissing the application filed in CrI.MP.No.2065 of 2022, by order dated 4.5.2023, wherein, the Court below did not permit the petitioner to assist prosecution.

2.The husband of the petitioner and others are facing trial before the Court below for offence under Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, Sections 5(c) r/w 6, 5(1) r/w 6, 9(1) r/w 10, 16 r/w 17 of POCSO Act, 2012 and 354(b), 372, 373 r/w 109, 494, 495 and 506(i) of IPC.

3.On an earlier occasion, the husband of the petitioner approached this Court and filed CrI.OP.No.24167 of 2018, on the ground that the matter has been compromised between the parties. This Court on examining the de facto complainant came to a conclusion that the matter has been compromised and that no useful purpose will be served in continuing with the proceedings. Accordingly, the quash petition was allowed by an order dated 22.11.2018 and the proceedings in Spl.SC.No.20 of 2015 was quashed.

4.As against the above order, the petitioner filed SLP before the Apex Court. The Apex Court in SLP (CrI).No.7448 of 2021, set aside the order passed by this Court on 22.11.2018. For proper appreciation, the entire order is extracted under:



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22.11.2018 allowing the petition under Section 482 of Code of Criminal Procedure, 1973, cannot be sustained as there are disputed questions of fact which require adjudication and conclusive decision on merits. The impugned judgment, in fact, refers to the statement made by one 'X' before the Judge. The said girl-'X' had also made a statement under Section 164 of the Code of Criminal Procedure, 1973, which is relied upon by the appellant. Police upon investigation has filed a charge-sheet. Learned counsel for the respondents, on the other hand, have drawn our attention to the FIR No. 91 of 2016 recorded at the Police Station Sethiathoppu, making certain allegations against the present appellant and her father. We have referred to the aforesaid submissions only to highlight, the disputed questions of fact involved.

In view of the above, we set aside the impugned order dated 22.11.2018 and allow the appeal directing the trial court to proceed in accordance with law, with the hope for expeditious disposal, preferably, within a period of one year from the date the copy of this order is received by the trial court. We clarify that we have not expressed any opinion or findings on the merits of the case and allegation made by both sides

5. Pursuant to the above order, the matter was restored before the Court below. The petitioner has been made as one of the witness (LW-11) on the side of the prosecution. The petitioner filed an application before the Court below for permission to assist the prosecution under Section 301(2) Cr.PC. The Court below on considering the facts and circumstances of the case and the materials available



on record, came to a conclusion that the petitioner cannot be permitted to assist the prosecution since the accused person has made certain allegations against the petitioner and her family members and if the petitioner is allowed to assist the prosecution, it will not be in the interest of the accused persons to effectively defend themselves in this case. Aggrieved by this order, the present criminal original petition has been filed before this Court.

6. Heard Mr.S.Anantha Narayanan, learned Senior Counsel for the petitioner, Mr.C.D.Johnson, learned counsel for R1 and Mr.A.Gopinath, learned Government Advocate (Crl. Side) for R7.

7. The learned Senior Counsel appearing on behalf of the petitioner submitted that assisting the prosecution under Section 301(2) Cr.PC, is an important right that has been given to any aggrieved person. To substantiate this submission, the learned Senior Counsel relied upon the following judgments:

(i) **Mina Lalita Baruwa .v. State of Orissa and Others** reported in **(2013) 16 SCC 173**.

(ii) **Rekha Murarka v. State of West Bengal and Another** reported in **(2020) 2 SCC 474**.

(iii) **Y.Balaji v. Karthik Desari and Another** reported in **(2023) SCC On-line SC 645**.

8. There is no quarrel with regard to the locus standi of an aggrieved person to assist the prosecution. This provision has been interpreted very widely and the Apex Court has gone to the extent of saying that the principles of criminal



jurisprudence requires that in some cases, the aggrieved person must be permitted to assist the prosecution since there is a tendency for the complainant and the accused to reach a compromise and to defeat the entire criminal case.

9. In the instant case, the husband of the petitioner (A1) has made certain serious allegations against the petitioner and her family members. The complaint given by the husband was also taken on file and an FIR came to be registered in Crime No.91 of 2016. This fact has also been taken note off by the Apex Court. In view of the same, there are allegations and counter allegations between the parties. If the petitioner is permitted to assist the prosecution, the defence of the accused person with regard to the serious allegations made by him against the petitioner and her family members, may be compromised. The accused person has been given a right to effectively defend himself in a criminal case. Hence, if a situation and which will arise affect the right given to the accused person, the same has to be necessarily taken note off by the Court.

10. The Court below has taken into consideration this fact and has rendered the following finding.

29.3.2014 அன்று மனுதாரரும், ஆவருடைய தகப்பனாரும் மனுதாரரின் சகோதரிகளும் பாதிக்கப்பட்ட சிறுமியை கடத்திச் சென்று மறுநாள் காலை சென்னை சைதாப்பேட்டை அனாதை மகளிர் காவல் நிலையத்தில் அவரை மிரட்டி பொய் புகார் கொடுக்க வைக்கப்பட்டதாக 1-ஆம் எதிர் மனுதாரரின் எதிருரையிலும் கூறப்பட்டுள்ளது. இவ்வழக்கு தொடர்பாக இருவிதமான எதிரெதிர்



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காட்டுகின்றன. அதில் ஒருவித பொருண்மையானது மனுதாரருக்கு எதிரான ஒன்றாகும். இத்தகைய சூழ்நிலையில் இம்மனு அனுமதிக்கப்பட்டால், மனுதாரர் தனக்கு எதிரான பொருண்மைகளை மழுங்கடிக்கச் செய்வதற்கும் திசை திருப்புவதற்கும் முயற்சிகளை மேற்கொள்ள வாய்ப்பு உள்ளது. எனவே, வழக்கின் தற்போதைய சூழ்நிலையில் மனுதாரருக்கு எதிராகவும் ஒருவித பொருண்மை அமைந்துள்ள நிலையில் இம்மனுவை அனுமதித்தால் அது நியாயமான விசாரணை (Fair Trial) என்ற கோட்பாட்டுக்கு எதிரான ஒன்றாக இருக்கும் என இந்நீதிமன்றம் கருதுகிறது. மேலும், இம்மனுதாரர் இவ்வழக்கில் ஒரு சாட்சியாகச் சேர்க்கப்பட்டுள்ளதால் தனது தரப்பைச் சொல்வதற்கு இம்மனுதாரருக்கு வாய்ப்பு உள்ளது. எனவே, மேற்சொன்ன காரணங்களால் இம்மனு அனுமதிக்கத்தக்கதல்ல என்றும் தள்ளுபடி செய்யத்தக்க ஒன்று என்றும் இந்நீதிமன்றம் முடிவு செய்கிறது.

11.The above finding that was rendered by the Court below does not suffer from any illegality or infirmity. Ultimately, the petitioner who is one of the witness on the side of the prosecution is going to come to the witness box and tender her evidence. At that point of time, the petitioner can come out with the entire facts to substantiate the allegations. This does not require the petitioner to assist the prosecution.

12.In the instant case, the accused persons are definitely going to confront the petitioner and others during cross examination with respect to the earlier criminal case given against her. Under such circumstances, if the petitioner is permitted to assist the prosecution, it will cause prejudice to the accused person in effectively defending themselves in the criminal case.



13. In the light of the above discussion, this Court does not find any ground to interfere with the order passed by the Court below and this criminal original petition accordingly stands dismissed.

19.01.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Station Incharge Officer
All Women Police Station
Neyveli
Cuddalore District
2. Sessions Judge
Special Court for exclusive trial of Cases
under POCSO Act, Cuddalore.
3. The Public Prosecutor,
High Court of Madras,
Madras.



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8 of 8

N. ANAND VENKATESH,, J.
kp

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