

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.06.2015

DELIVERED ON: 10.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.10564 of 2015 and M.P.No.1 of 2015

Kumar @ Chockalingam ...Petitioner

Vs

Inspector of Police
B-4 Rajamangalam Police Station
Chennai
Cr.No.1043 of 2011 .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to S.C.No.182 of 2013 on the file of Mahila Court, Chennai and examine the same for the purpose of satisfaction of this Court and allow this petition with a direction to the Mahila Court to recall P.W.1 Jennifer and P.W.2 Durga and permit the petitioner to cross examine them pertaining to evidence of P.W.11 Dr.Varalakshmi and Exs.P.12 and 13 in the interest of justice.

For Petitioner Mr. R. Vijayakumar
For Respondent Mr.C.Emalias
Additional Public Prosecutor

ORDER

This application has been filed by the accused challenging the order dated 26.03.2015 passed by the trial Court dismissing the application of the petitioner/accused to recall P.W.1 and P.W.2.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. For the sake of convenience, the parties will be referred to by their name, Kumar [accused] and Jennifer [de facto complainant].

4. On a complaint lodged by Jennifer, the respondent police initially registered a case against Kumar for an offence under Sections 342, 354 IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998 and after completing the investigation, the police filed a Final Report for the aforesaid offences which was taken on file in C.C.No.904 of 2011 by the learned X Metropolitan Magistrate, Egmore. Before the learned

Magistrate, Jennifer and her mother Durga were examined as P.W.1 and P.W.2. Certain other witnesses were also examined on behalf of the prosecution. From the evidence adduced by the prosecution witnesses, the learned X Metropolitan Magistrate felt that an offence under Section 376 IPC appears to have been made out and therefore, committed the case to the Sessions Court for trial.

5. After committal, the case was numbered as S.C.182 of 2013 and made over to the Mahila Court, Chennai for trial. It appears that the Mahila Court, Chennai had framed charges for offences under Sections 342 and 376 IPC and under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998. The prosecution examined 10 witnesses in the trial and after the accused was examined under Section 313 Cr.P.C., arguments were heard by the Mahila Court.

6. During the course of arguments, the prosecution felt that they have to examine one Dr.Varalakshmi, who is supposed to have given treatment to Jennifer [P.W.1] immediately after the alleged incident. The prosecution moved an application under Section 311 Cr.P.C. which was allowed by the trial Court and Dr.Varalakshmi was examined as P.W.11 and the medical records relating to the treatment that was given by Dr.Varalakshmi to Jennifer [P.W.1] immediately after the incident, were marked. Dr.Varalakshmi was also subjected to cross examination by the defence. Now, the defence moved Crl.O.P.No.3093 of 2015 before the trial Court under Section 311 Cr.P.C to recall Jennifer [P.W.1], her mother Durga [P.W.2] and the Investigating Officer [P.W.10] for further cross examination on the ground that some more questions are required to be asked to them with regard to the treatment that was given by Dr.Varalakshmi.

7. The trial Court permitted the defence to recall the Investigating Officer [P.W.10], but, refused to recall Jennifer [P.W.1] and her mother Durga [P.W.2] by order dated 26.03.2015, challenging which the accused Kumar is before this Court.

8. Mr. R. Vijayakumar, learned counsel for the petitioner submitted that it is essential to recall Jennifer and Durga for further cross examination with regard to the medical treatment that was given to them.

9. This Court carefully considered the arguments advanced by Mr.R.Vijayakumar, learned counsel and also perused the records.

10. Jennifer [P.W.1] was 15 years old when the alleged incident took place. Jennifer [P.W.1] in her evidence, has stated that she went to school on 12.07.2011 and in the afternoon, when she came home, as she was suffering from ear pain, Kumar [accused] who lives nearby, told her that he is suffering an injury in hand and requested her to fetch water from nearby place and leave it in his house. Believing his words, Jennifer fetched water and brought it into the house of the accused. At that time, the accused gave her a juice to drink and thereafter, he had ravished her. She

informed this to her mother and her mother had taken her to Kumaran Hospital on 14.07.2011, where she was treated by Dr.Varalakshmi.

11. From the evidence of Jennifer [P.W.1] and her mother Durga [P.W.2], they have not suppressed the fact that Jennifer was taken to Kumaran Hospital and was treated on 14.07.2011. The prosecution sought to examine Dr.Varalakshmi, perhaps, as a measure of abundant caution, as the defence made a hue and cry that initially medical records were not obtained by the police.

12. It must be remembered that Jennifer was only 15 years old when the incident took place and she gave evidence first before the X Metropolitan Magistrate in C.C.No.904 of 2011 and again she has given evidence before the Sessions Court in S.C.No.182 of 2013 on 18.06.2013. Her examination-in-chief was recorded on 18.06.2013 and she was recalled by the defence only on 04.11.2013. She was extensively cross-examined as could be seen from the records which she has withstood. Similarly, Durga gave evidence before the Magistrate and again, she was examined-in-chief before the Mahila Court on 18.06.2013 and she was recalled and cross examined on 04.11.2013. She also appears to have been subjected to grilling cross examination by the defence.

13. Under such circumstances, this Court is of the view that it will not serve the interest of justice if the poor victim and her mother are made to once again appear before the Court and be subjected to cross examination in respect of some treatments supposed to have been given by Dr.Varalakshmi. This Court does not find any infirmity in the order passed by the trial Court and therefore, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Inspector of Police
B-4 Rajamangalam Police Station
Chennai.

2. The Mahila Judge, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.vijayakumar, Advocate,SR.28432.

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