

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2015

DELIVERED ON : 08.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.13656 of 2015

Mathankumar

..Petitioner

Vs

State rep by
Inspector of Police
Anamalai Police Station
in Cr.No.135/2013
Coimbatore District.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order of the Special Judge, Mahila Court, Coimbatore in CMP No.148 of 2015 dated 13.04.2015 in Spl.C.C.No.60 of 2014.

For Petitioner Mr.P.Kalimuthu
For Respondent Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This petition has been filed to to set aside the order of the Special Judge, Mahila Court, Coimbatore in CMP No.148 of 2015 dated 13.04.2015 in Spl.C.C.No.60 of 2014.

2. It is seen that this petitioner is facing prosecution in Spl.C.C.No.60 of 2014 for offences under Sections 506(i), 377 IPC and Section 3 of POSCO Act. The prosecution examined P.W.1 to P.W.8 and they were not cross examined by this petitioner and he did not co-operate in the conduct of the trial. Therefore, the trial Court in exercise of the power under Section 309 Cr.P.C., cancelled the bail of this petitioner and rightly remanded him to custody as laid down by the Supreme Court in State of Uttar Pradesh v. Shambhu Nath Singh [JT 2001 (4) SC 319]. Whilst in custody, the petitioner filed an application under Section 311 Cr.P.C. for recalling the witnesses, which was dismissed by the trial Court on 13.04.2015, challenging which the petitioner is before this Court.

3. This Court carefully perused the case records and found that the order passed by the learned trial Judge cannot be said to be wholly incorrect. This petitioner has been playing truant with the

Court by not cross examining the witnesses and on account of his recalcitrant conduct, the trial Court had no other option, but to remand him to custody under Section 309 Cr.P.C. This Court has to strike a harmonious balance between the rights of the accused and the inconvenience of witnesses. The petitioner is facing prosecution for grave offences and it will serve the interest of justice, if once chance is given to the petitioner for cross examining the prosecution witnesses.

4. Under such circumstances, the order in CMP No.148 of 2015 dated 13.04.2015 passed by the learned Special Judge, Mahila Court, Coimbatore is set aside only in respect of recalling of witnesses. As regards the custody, the petitioner shall continue to be in custody. The victim is a minor girl and therefore, the learned trial Judge shall fix a specific date for summoning her for the purpose of cross examination by the petitioner/accused.

Section 273 Cr.P.C. reads as follows:

"273. Evidence to be taken in presence of accused.-- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.]

5. The Supreme Court in Sakshi vs. Union of India [AIR 2004 SC 3566] has given the guidelines for examining a victim girl. The trial Court shall follow the guidelines by keeping a screen between the accused and the victim girl. The accused should be asked to give his questions in writing and the questions should be put by the Court to the witness and the answer recorded. If any threat is made to the witness, the accused will forfeit his right to cross examine, which order the trial Court itself can pass. The cross examination of the witness should be completed within two weeks from the date of receipt of a copy of this order and the trial Court is directed to report to this Court immediately about the conduct of the accused. With the above direction, this petition is disposed of.

gms

s/d-

Assistant Registrar(CO)

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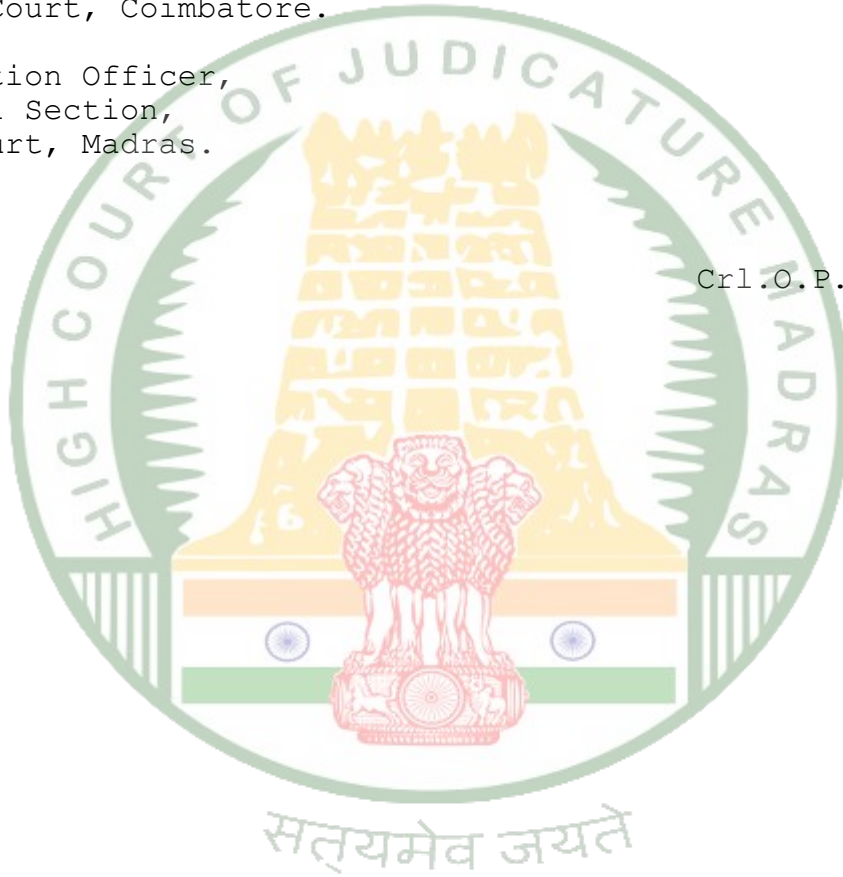
Sub-Assistant Registrar

To

1. Inspector of Police
Anamalai Police Station
in Cr.No.135/2013
Coimbatore District.
2. The Public Prosecutor
High Court, Madras.
3. The Special Judge,
Mahila Court, Coimbatore.
4. The Section Officer,
Criminal Section,
High Court, Madras.

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