

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-02-2015

Coram

THE HONOURABLE MR. JUSTICE R.S. RAMANATHAN

Crl.O.P. No. 161 of 2015

and

M.P. No. 1 of 2015

R. Swathi Marthandan

... Petitioner

Versus

The State rep. by
The Inspector of Police
S-12, Chitlapakkam Police Station

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 05.11.2014 made in C.M.P. No. 1027 of 2014 in S.P.L. Case No.15 of 2014 passed by the learned Sessions Judge, Mahila Court, Chengalpattu District.

For Petitioner : Mr. C.D. Johnson
For Respondents : Mr. M. Maharaja
Additional Public Prosecutor

ORDER

The petitioner, who is arrayed as accused in Spl.Case No.15 of 2014 (Crime No. 949 of 2013) before the trial Court, has come forward with this Criminal Original Petition praying to set aside the order dated 05.11.2014 made in C.M.P. No. 1027 of 2014 in S.P.L. Case No.15 of 2014 passed by the learned Sessions Judge, Mahila Court, Chengalpattu District.

2. It is submitted by the learned counsel for the petitioner that the petitioner has filed Crl.M.P. No. 1027 of 2014 in SPL Case No. 15 of 2014 under Section 311 of Cr.P.C. to recall PWs 1 to 2 for cross-examination and PW3, the victim girl, for further cross-examination. The said application was partly allowed by the trial court in so far as it relates to recalling PWs 1 and 2. However, the application was dismissed in so far as it relates to recalling PW3 and to cross-examine her once again on the ground that PW3 was a minor and as contemplated under the provisions of The Protection of Children from Sexual Offences Act, 2012 (hereinafter called as The Act) the minor girl cannot be repeatedly directed to appear before the Court. The learned counsel for the petitioner further submits

that though valid reasons were not stated in the petition under Section 311 of Cr.P.C. for recalling PW3 and PW3 was examined and cross-examined on 19.11.2014, and at that time some important questions were omitted to be asked to her. Therefore, having regard to the seriousness of the allegations for which the petitioner is facing trial before the court below, in the interest of justice, one more opportunity may be given to the petitioner to further cross-examine the victim girl. It is further submitted by the learned counsel for the petitioner that at the time of the alleged offence, PW3 was minor and now she had attained majority, therefore, the prohibition under the Act will not be a ground to reject the application filed by the petitioner under Section 311 of Cr.P.C besides that no prejudice will be caused to PW3 to appear and depose before the trial court to testify about the case on a fixed date. In the above circumstances, the learned counsel for the petitioner prayed for setting aside the order passed by the court below.

3. The learned Additional Public Prosecutor appearing for the respondent would submit that the Court below is justified in dismissing the application of the petitioner to re-call and further cross-examine PW3 by citing the provisions contained in the Act and he prayed for dismissal of the Criminal Original Petition.

4. I heard the learned counsel for both sides and perused the material records placed. As rightly pointed out by the learned counsel for the petitioner, no valid reasons were stated in the petition to re-call PW3 once again and this led to the dismissal of the application in so far as it relates to cross-examination of PW3. According to the learned counsel for the petitioner, the recalling of PW3 is necessary to put vital questions relating to the case.

5. The Act contemplates that the minor girl shall not be asked to repeatedly appear before the Court to testify the case. It has to be stated that PW3 was examined and cross-examined on 19.09.2014 and thereafter she was not asked to appear before the Court. Having regard to the nature and gravity of the offence to which the petitioner/accused is confronting trial in the criminal case, one more opportunity may be given to the petitioner to re-call PW3 for further cross-examination by fixing a date for her appearance before the trial Court in the interest of justice.

6. Accordingly, the Criminal Original Petition is allowed. The learned trial Judge is directed to fix a date for appearance of PW3 on which date the counsel for the petitioner shall cross-examine her.

Thereafter, the learned trial Judge is directed to proceed with the Criminal Case and dispose it of within a period of three months thereafter. Consequently, connected miscellaneous petition is closed.

rsh

s/d-
Assistant Registrar(R)
Dt:5/3/2015

True Copy

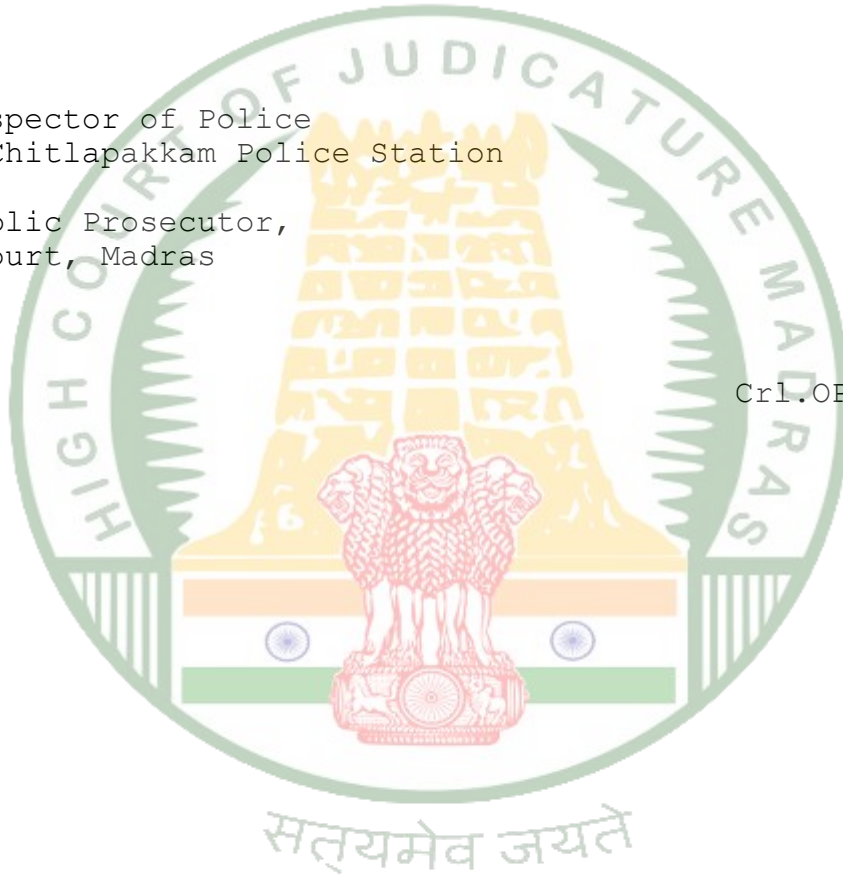
Sub-Assistant Registrar

To

1. The Inspector of Police
S-12, Chitlapakkam Police Station
2. The PUblic Prosecutor,
High Court, Madras

vsn(co)
prk9/3

Crl.OP No. 161 of 2015



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