

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2015
DELIVERED ON : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.17714 of 2011
and M.P.No.1 of 2011

1.Maharajan @ Arun Maharajan
2.Vinayagam @ Veena
3.S.Balakrishnan ... Petitioners

vs.

The State rep by
The Inspector
H-3, Tondiarpet Police Station
Chennai 600 021.
Respondent

..

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order of the learned Mahila Judge, at Chennai dated 20.06.2011 passed in S.C.No.277 of 2006 closing the defence side witnesses and also closing the evidence of Mr.T.Ramesh Kumar as he is the Court witness.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to set aside the order of the learned Mahila Judge, at Chennai dated 20.06.2011 passed in S.C.No.277 of 2006 closing the defence side witnesses and also closing the evidence of Mr.T.Ramesh Kumar as he is the Court witness.

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

3. This Court called for the records from the trial Court and perused the same. It is seen that Maharajan, the first petitioner got married to Krishnakumari on 25.05.2001 and they both were residing in their matrimonial home along with parents of Maharajan [All. They have two children through the wedlock. It is seen that on 17.09.2005 at around 5.45 p.m., Karuppasamy, the landlord of the house in which the couple were residing, observed smoke bellowing

out from the first floor and when he went inside, he found the body of Krishnakumari charred in the kitchen of their portion. No one was there in the house and so the landlord informed the accused about the incident.

4. On the complaint given by Karuppusamy, the respondent police registered a case in Cr.No.1690 of 2005 under section 174(3) Cr.P.C. and took up investigation. Inquest was held and the body was sent for postmortem. After completing the investigation, the respondent filed a Final Report against Maharajan and his parents for offences under Sections 498-A, 304-B, 306 r/w 34 IPC before the jurisdictional Magistrate and the case was later committed to the Court of Sessions, where it was taken on file as S.C.No.277 of 2006.

5. Charges were framed against the accused and they pleaded not guilty. Prosecution examined ten witnesses and the accused were questioned under Section 313 Cr.P.C. on 17.02.2011. When the accused were questioned whether they have any witnesses to examine, they stated in affirmative and filed a list of five names on 25.02.2011. They also filed another list on the same day bearing the name of one Ramesh Kumar to be examined as Court witness. Section 233 Cr.P.C. reads as follows:

"233. Entering upon defence.

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

6. The accused did not apply for issue of any process for summoning the witnesses cited in the first list dated 25.02.2011. It is not necessary for the accused to request the Court to issue process because the accused can themselves bring their witnesses and only when they apprehend that the witnesses may not come for giving evidence, it is necessary for them to seek intervention of the Court and the Court is also empowered to reject the plea, if the Court finds that the request of the accused is vexatious or for delaying the interest of justice. In this case, the accused neither produced the witnesses nor sought the intervention of the Court for issuing process to them. The accused prayed for issuing

process to one T.Ramesh Kumar who is cited as Court witness in the second list dated 25.02.2011, that was submitted by him. This Court is unable to countenance as to how the accused can seek a witness to be examined as a Court witness, because Court witnesses are persons whom the Court would want to examine in the interest of justice. Be that as it may, even in the second list submitted by the accused, he has not given even the address of the said T.Ramesh Kumar and had not given any details about him. The case was adjourned from time to time for production of Defence Witnesses as follows:

"25.02.2011, 10.03.2011, 17.03.2011, 21.03.2011, 28.03.2011, 06.04.2011, 12.04.2014, 21.04.2014, 26.04.2014, 13.05.2011."

Ultimately, exasperated, the learned trial Judge closed the case on 20.06.2011 by passing the following order:

"All the accused present. Both counsels present. DWs closed. For hearing both sides arguments, call on 23.06.2011."

7. Challenging the docket order passed by the trial Judge, the petitioner filed this present petition and the trial proceedings was stayed by this Court on 04.08.2011. From 04.08.2011 to today, the case never saw the light of the day until it was resurrected from the coffin recently. It is seen that in a case of such heinous nature, the accused have been adopting dilatory tactics by filing a list of witness and not examining any of them on their side, but protracting the trial, as could be seen from the adjudication orders referred to above. It is true that the defence should be given a fair opportunity to defend the case, but it is equally incumbent upon the defence to examine their witnesses and not protract the trial in the guise of defence evidence. The accused have not even stated how the evidence of the witnesses would be relevant for the just decision of their case. The Hon'ble Supreme Court in *Rajesh Talwar vs. CBI* [(2013) 4 MLJ (crl.) 362 SC] has held the trial Courts are not obliged to accede to the request made by the accused to entertain and allow application for additional evidence in terms of Section 233 and they can refuse such request if it appears that they are made in order to vex the proceedings or delay the same. In this case, it appears that the petitioners had been adopting all possible methods to protract the trial and vex the proceedings.

8. This petition deserves to be dismissed, but to give further opportunity to the accused to produce defence witnesses, a direction is given to the petitioner/accused who are admittedly on bail, to produce the five witnesses cited in the first list dated 25.02.2011 and examine them before 15.06.2015. This Court is aware that there is no summer vacation for the Mahila Court in Chennai, which is seized of the case. If the petitioners do not co-operate with the conduct of trial, the trial Court is entitled to cancel their bail and remand them to custody as laid down by the Hon'ble Supreme Court in *JT 2001 4 Sc 319* [*State of Uttar Pradesh v. Shamphunath Singh and others*]. The trial Court is

directed to complete the trial within a period of three months from the date of receipt of a copy of this order. With the above direction, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

gms

To

1. The Inspector
H-3, Tondiarpet Police Station
Chennai 600 021.

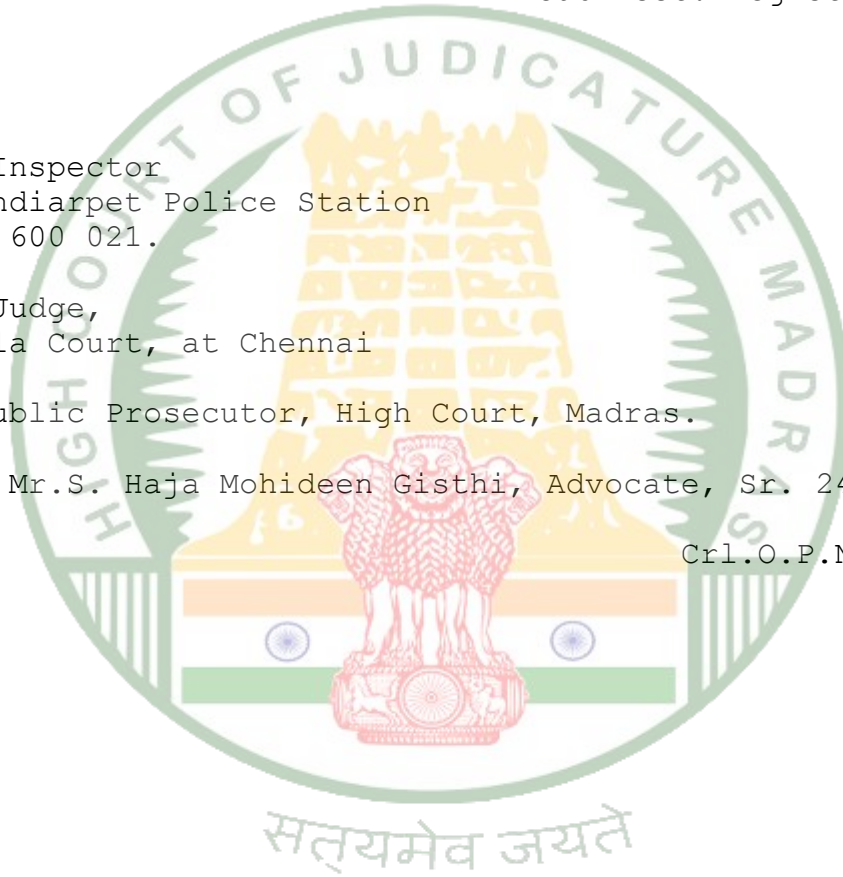
2. The Judge,
Mahila Court, at Chennai

3. The Public Prosecutor, High Court, Madras.

1 cc to Mr.S. Haja Mohideen Gisthi, Advocate, Sr. 24853

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