

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2015

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.16959 of 2015

and

M.P.No.1 of 2015

1.A.Sathanraj

2.Prema

... Petitioners/Accused

Vs.

The State

Represented by the Assistant Commissioner,

N-1, Royapuram Police Station,

Chennai - 600 013.

(Crime No.657/2009)

... Respondent/Complainant.

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure to call for the records and set aside the order dated 07.05.2015 in S.C.No.491 of 2012 pending on the file of Learned Additional Sessions Judge for Mahila Court at Chennai.

For Petitioners : Mr.G.Prabaharan

For Respondent : Mr.C.Emalias

Addl. Public Prosecutor

O R D E R

This criminal original petition has been filed to call for the records and set aside the order dated 07.05.2015 in S.C.No.491 of 2012 pending on the file of Learned Additional Sessions Judge for Mahila Court at Chennai.

2. It is the case of the prosecution that A.Sathanraj (first petitioner herein) is a Dalit and he got married to Kavitha, who is a caste - Hindu, on 01.04.2009 against the wishes of parents. After marriage, they started their life in the matrimonial home as husband and wife. While so, on 18.11.2009 Kavitha committed suicide in the matrimonial home by hanging in connection with which, the respondent police registered a case in Crime No.657 of 2009, initially, under Section 174 Cr.P.C. Since suicide was within 7 years of marriage, inquest was conducted by the Revenue Divisional Officer who has stated in his report that suicide of Kavitha was not due to

dowry harassment. Police completed the investigation and filed a final report against Sathanraj (first petitioner herein) for an offence under Section 306 IPC.

3. After the case was committed to the Court of Sessions, it was taken on file as S.C.No.491 of 2012 and was made over to the Mahila Court for trial. Before Mahila Court, Chennai, the prosecution examined 10 witnesses and after that, the accused was questioned under Section 313 Cr.P.C., the case was getting repeatedly adjourned for the accused to produce defence witnesses. Since the accused did not file even a list of witnesses to be examined on his behalf, the trial Judge passed the following order;

" A1, A2 present. Police present. Defence counsel Junior present. But defence witness list not filed after many hearings. Petition U/s 309 Cr.P.C. filed and dismissed. Defence evidence closed. Arguments call on 14.05.2015."

challenging the order of the trial Court, A.Sathanraj (first petitioner herein) is before this Court.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the state.

5. The learned counsel appearing for the petitioners submitted that Revenue Divisional Officer had conducted the inquest in the presence of some Panchayatars, who have very categorically told the Revenue Divisional Officer, that Kavitha went to her parental home, where, she was insulted by her people for having married a Dalit and out of frustration, she committed suicide. In order to prove this aspect, the defence went to examine the panchayatars, who were present during the inquest. It is true that the accused did not file a list of witnesses on his behalf and therefore, the trial judge cannot be found fault for passing the impugned order.

6. Mr.Prabhakaran, the learned counsel appearing for the accused submitted that since the address of the panchayatars were not available, the accused was not able to file the list of witnesses before the trial Court. Before this Court, the name of witnesses whom the accused wants to examine on his behalf with their addresses has been furnished. The said list contains the following the names;

" List of proposed defence witnesses.

1.Mrs.Indira, F/a.40 yrs,
W/o.Selvam,
No.28, Pazhaiya Aattuthotti Salai,
Royapuram, Chennai - 13.

2.Mr.Shiva, M/A. 41 Yrs,
S/o.Arumugam,
No.3A, Pazhaiya Aattuthotti Salai,
Royapuram, Chennai - 13."

7. It is seen that this petitioner is facing a serious charge under Section 306 I.P.C and therefore, adequate opportunities should be given to the accused for putting forth his case. Otherwise, it will lead to travesty of justice. At the same time, the accused cannot prolong the trial in the guise of examining defence witnesses. This Court has to strike a harmonious balance between the right of the accused for a fair trial and the duty of the Court to follow the procedure of day to day trial under Section 309 Cr.P.C. This court is of the view that it will serve the interest of justice, if the accused is given one opportunity to examine the aforesaid two witnesses on his behalf.

8. In the result, this petition is allowed and the order impugned is set aside. The trial Court is directed to permit the accused to examine the aforesaid two persons as defence witnesses. The accused will be entitled to produce their witnesses himself without formal summon from the trial Court. The accused shall examine the said two witnesses within two weeks from 31.07.2015. Consequently, connected miscellaneous petition is closed.

sms

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner,
N-1, Royapuram Police Station,
Chennai - 600 013.
(Crime No.657/2009)
2. The Additional Sessions Judge
for Mahila Court at Chennai.
3. -DO- thro' The Principal Sessions Judge,
Chennai.
4. The Public Prosecutor,
High Court, Madras.

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