

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1129 of 2015
and
MP.No. 01 of 2015

Suresh

.. Petitioner/Accused

Versus

The State rep.by its
Inspector of Police
Takkolam Police Station
Arakkonam Taluk
Vellore District
(Crime No.34/2008)

.. Respondent/Complainant

Criminal Revision case filed under Section 397 and 401 of Cr.P.C. to set aside the order in CrI.M.P.No.235 of 2015 in S.C.No.155 of 2013 on the file of the Court of Sessions Judge, Magalir Neethi Mandram, Fast Track Court, Vellore dated 17.6.2015.

For Petitioner : Mr.M.Rajinikanth

For Respondent : Mr. V.Arul
Government Advocate
(Criminal side)

O R D E R

सत्यमेव जयते

The petitioner has filed the above Criminal Revision case as against the order allowing the petition filed by the prosecution to add the name of the victim girl in the list of prosecution witnesses.

2. The petitioner is the accused in S.C.No.155 of 2013 on the file of the Sessions Judge, Magalir Neethi Mandram, Fast Track Court, Vellore. Pending trial, the prosecution has filed petition under Section 173 (8) Cr.P.C to add the name of the victim girl in the list of prosecution witnesses.

3. According to the prosecution, the victim girl, who is a deaf and dumb, was raped by the accused on 16.2.2008. Since the

victim was deaf and dumb, her evidence was recorded by a teacher of deaf dumb High School, Kancheepuram. According to the prosecution, inadvertently, the name of the victim girl was omitted to be mentioned in the list of prosecution witnesses. Hence, they filed the present petition.

4. The learned counsel for the petitioner submitted that the prosecution has completed the investigation and submitted the charge sheet and charges were also framed against the accused. The learned counsel for the petitioner further submitted that the Court below ought to have dismissed the petition filed under Section 173 (8) as the investigating officer has not forwarded any further report so as to attract Section 173 (8) Cr.PC.

5. The learned Government Advocate submitted that already the statement of victim has been recorded through a teacher of deaf dumb and the same has been produced before the Court but, inadvertently, she was not shown as a witness. Hence, the prosecution has filed a petition seeking permission to examine her as a witness and the same has been rightly allowed by the Court below. Therefore, the learned Government Advocate prayed for dismissal of the revision.

6. Heard the learned counsel for the petitioner, the learned Government Advocate and perused the materials available on record.

7. The only contention raised by the petitioner is that in the absence of any further evidence and in the absence of filing further report by the Prosecution, the petition under Section 173(8) is not maintainable. According to the prosecution, they have completed all the process but only they have omitted to cite the victim girl as a witness.

8. It is the fittest case that this Court has to interfere and to take action against the concerned police personnel as well as the Public Prosecutor, who has filed the charge sheet without citing the name of the victim girl.

9. Admittedly, in this case, the victim girl, who is a deaf and dumb, was raped by the accused on 16.2.2008. She conveyed the incident to her mother and sister by way of gesture. Thereafter, the complaint has been given. Since she is deaf and dumb, her statement was recorded by a teacher of deaf dumb High School, Kancheepuram. The prosecution has also filed the charge sheet. In the charge sheet, the first person to be cited as a witness is the victim girl. But unfortunately, in this case, the victim girl was not shown as a witness. It is needless to state that for giving evidence, people need not talk. They can give evidence by gesture. It is not in dispute that the deaf and dumb person can only convey the message by

sign or any other acceptable mode known to law. Even in TV, we can see that gesture is used to convey the news to deaf and dumb person. When such being the case, it is not known how the prosecution has omitted to add the victim girl, who is a deaf and dumb, as a witness, when she is a proper and necessary person to give evidence.

10. Fortunately, Now the present investigating officer as well as the present Public Prosecutor have rightly taken steps to add the victim girl in the list of prosecution witnesses as already her statements were recorded through interpreter, namely, the teacher of deaf dumb High School, Kancheepuram. If they have not taken steps now, definitely, a great miscarriage of justice would have been caused to the victim. Therefore, the Court below has rightly allowed the petition filed by the prosecution to add the name of the victim girl in the list of the prosecution witnesses.

11. Therefore, I do not find any reasons to interfere with the reasoned order of the Court below. Accordingly, the Criminal revision case is dismissed. Consequently, connected miscellaneous petition is also closed.

12. The Superintendent of Police concerned is directed to take appropriate Departmental proceedings against the erring investigating officer, who has omitted to add the name of the victim as a witness while filing charge sheet. The authority concerned is also directed to take action against the Public Prosecutor concerned, who has approved the charge sheet at that point of time, for any lapses.

Sd/-
Assistant Registrar(CS V)

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सत्यमेव जयते

Sub Assistant Registrar

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To

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1.The Sessions Judge, Magalir Neethi Mandrum,
Fast Track Court, Vellore.

2.The Superintendent of Police,
Vellore District.

3.The Director of Prosecution,
Vepery, Chennai-7.

4.The Inspector of Police,
Takkolam Police Station,
Arakkonam Taluks,
Vellore District.

5.The Public Prosecutor,
High Court, Madras-104.

Cr1 RC No.1129 of 2015

msm(CO)
srg(08/01/2016)



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