

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.188 of 2015

D.Muralidharan

... Petitioner

Vs

The Sub-Inspector of Police,
All Women Police Station,
Villivakkam, Chennai - 600 049.

... Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to call for the records in Crl.M.P.No.7296 of 2014 in C.C.No.12426 of 2005 dated 11.02.2015 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai - 600 008 and set aside the same as illegal.

For Petitioners: Mr.A.Ramesh

For Respondent : Mr.P.Govindarajan
Additional Government Pleader

O R D E R

Being aggrieved by the dismissal of the petition filed under Section 311 Cr.P.C., to examine Smt.Uma Maheswari, the then Inspector of Police, All Women Police Station, Anna Nagar, Smt.Vijayalakshmi, the then Inspector of Police, All Women Police Station, Thirumangalam, Smt.Panneerselvai, the then Inspector of Police, All Women Police Station, Villivakkam and also the complainant Sumathi/PW1, for cross examination, Crl.M.P.No.7296 of 2014, has been filed in C.C.No.12426 of 2005 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, under Section 311 Cr.P.C.

2. Averments in the petition, as deduced from the impugned order are that during the pendency of the trial, Criminal Miscellaneous Petition has been filed to call for the document under CSR No.228/W5 on the file of the Anna Nagar All Women Police Station, numbered as 4599 of 2005. The said petition has been ordered accordingly. But the said document was not produced by the Inspector of Police, All Women Police Station, Anna Nagar, even after a lapse of four years.

3. According to the petitioner, Commissioner of Police in his letter dated 01.12.2004, has stated that some other police officers have also inquired into the case, and two CSRs have been filed. One, on the file of Anna Nagar All Women Police Station, vide No.228/W5/2004 and the other, on the file of Villivakkam All Women Police Station, vide No.124/V1/AWPS 2004. Before the Court below, the petitioner has also contended that examination of the three inquiry officers stated supra, are required and that PW1 has to be recalled for cross examination to prove that on the 2nd complaint made by PW1, after three months on the file of the All Women Police Station, Villivakkam, First Information Report has been registered and consequently, a charge sheet in C.C.No.12426 of 2005 on the file of learned Chief Metropolitan Magistrate, Egmore, Chennai, has been filed. It is the contention of the petitioner that the police ought not to have registered a crime on the second complaint and consequently, the Court below ought not to have framed a charge.

4. Objecting to the prayer sought for, police has stated that C.C.No.12426 of 2005 is under trial since 2005. So far, eight witnesses have been examined. PW1, Sumathi was examined on 12.07.2005, 21.11.2005 and 12.06.2006, respectively. Apart from the family members of the complainant, witnesses Pws 7 to 9 were also examined, as early as, in the year 2008 and 2010. Police has further stated that the petitioner/accused did not choose to cross examine them. The police has also contended that the petitioner is aware of the fact that complainant/PW1, is living abroad, and her whereabouts is not known to anybody. Subpoena sent to PW1 also could not be served and that the same has been returned to the learned Chief Metropolitan Magistrate, Egmore on 09.06.2009, with a report.

5. Police has also stated that Smt.Uma Maheswari and Smt.Vijayalakshmi were not the investigating officers in the present case. Smt.Panneerselvi, the then Sub-Inspector of Police, AWPS, Villivakkam, alone is the investigation officer and that her chief and cross examination, was also over. For the abovesaid reasons, police has objected to the application filed under Section 311 Cr.P.C., contending inter alia that the said petition has been filed only to protract the trial.

6. Upon perusal of the material on record, the learned Chief Metropolitan Magistrate, Egmore, has observed that the Sub Inspector of Police, W9, All Women Police Station, Villivakkam, Chennai has filed a final report against the petitioner/accused and that charges have been framed against him, as early as on 16.06.2005, for the offences under Sections 420, 406, 417 IPC and Section 4 of Dowry Prohibition Act. Thereafter, on the side of the prosecution witnesses, PWs.1 to 10 have been examined and Exs.P1 to P13 have been marked. Out of the 10 prosecution witnesses, Pws 6 to 10 have been cross examined by the accused. At this stage, the petitioner has filed the present Crl.M.P.No.7296 of 2014 under Section 311 Cr.P.C.

7. Upon perusal of the material on record, learned Chief Metropolitan Magistrate, Egmore, Chennai, has also noticed that the petitioner has also filed a petition under Section 311 Cr.P.C., to recall PW1 and that the said petition was allowed by the Court on 05.09.2012 in CrI.M.P.No.4708 of 2011, on condition that the petitioner has to bear all the expenses to summon PW1, including batta and other expenses, payable to the witness. Thereafter, Subpoenas have been issued to PW1 for cross examination. But the same has been returned to the Court alongwith a report of the Inspector of Police, W9, All Women Police Station, Villivakkam, stating that the said witness i.e., PW1 is not residing in the said address and that she has vacated the premises 5 years ago and that the whereabouts of PW1, is not known to anyone.

8. When the petitioner has filed an application under Section 300 Cr.P.C., to dismiss the case, on the grounds inter alia that as per Clause 2 to Article 20 of the Constitution of India, no person shall be prosecuted and punished, for the same offence, more than once and it amounts to double jeopardy, vide order in CrI.M.P.No.2379 of 2012 dated 08.01.2013, the learned Chief Metropolitan Magistrate, Egmore, Chennai, has dismissed the said petition.

9. On the avements to the petition in CrI.M.P.No.7296 of 2014 in C.C.No.12426 of 2005 filed under Section 311 Cr.P.C., to examine the three inquiry officers viz., Smt.Uma Maheswari, the then Inspector of Police, All Women Police Station, Anna Nagar, (2) Smt.Vijayalakshmi, the then Inspector of Police, All Women Police Station, Thirumangalam and (3) Smt.Panneerselvi, the then Sub-Inspector of Police, All Women Police Station, Villivakkam, the Court below has observed that Smt.Panneerselvi, the then Sub-Inspector of Police, All Women Police Station, Villivakkam, has been cited as LW13 and that she has been examined as PW9. She has also been cross examined at length on three hearing dates i.e., 27.12.2012, 04.02.2013 and 06.03.2013 respectively. The Court below has held that there is no necessity to cross examine witness/PW9, Smt.Panneerselvi, once again.

10. With regard to the other two witnesses viz., Smt.Uma Maheswari, the then Inspector of Police, AWPS, Anna Nagar and Smt.Vijayalakshmi, the then Inspector of Police, AWPS, Thirumangalam, the learned Chief Metropolitan Magistrate, Egmore, Chennai, has observed that the prosecution has not cited them as witnesses. Even in the objections filed, the prosecution has clearly stated that the abovesaid officers were not the investigating officers of the crime, reported and culminated into C.C.No.12426 of 2005 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

11. On the contention of the petitioner that the abovesaid officers have enquired into the complaints and assigned two CSRs, one, on the file of Anna Nagar All Woman Police Station and another,

on the file of Villivakkam, the learned Chief Metropolitan Magistrate, Egmore, Chennai has observed that if at all the petitioner is of the opinion that examination of the abovesaid officials is necessary and essential, for the purpose of trial, he can always cite them as defence witnesses and file an application before the Court and examine them, on his behalf. The Court below has further held that the petitioner cannot compel the prosecution, to produce and examine them. Thus, for the reasons stated supra, vide order dated 11.02.2015 in CrI.M.P.No.7296 of 2014 in C.C.No.12426 of 2005, the learned Chief Metropolitan Magistrate, Egmore, Chennai has dismissed the application filed under Section 311 Cr.P.C.

12. Though, Mr.A.Ramesh, learned counsel for the petitioner assailed the correctness of the impugned order on the grounds that PW1, has not been cross examined, despite the steps taken by the petitioner and that therefore, the rights of the petitioner to cross examine PW1 has been shut down, this Court is not inclined to accept the said contention for the reason that the directions issued in CrI.M.P.No.4708 of 2011 dated 05.09.2012 for summoning PW1 for cross examination, could not be complied with, for the reason that the subpoena issued for PW1's cross examination has been returned to the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, with a report of the Inspector of Police, W9 All Women Police Station, Villivakkam, stating that the said witness viz., PW1, is not residing in the said address and that she has also vacated the premises 5 years ago and whereabouts of PW1 is also not known to anybody.

13. In the said circumstances, it cannot be contended that the rights of the petitioner to cross examine PW1 has been shut down by the Court. Further, perusal of the impugned order further shows that the case is under trial, since 2005. PW1 Sumathi, has been examined on 12.07.2005, 21.11.2005 and 12.06.2006, respectively. PWs.7 to 9, have been examined, as early as, in the year 2008 and 2010, respectively. The Court below has also observed that at that stage, the petitioner/accused did not choose to cross examine them. During the course of trial, P.Ws.7 to 9 have been examined and Exs.P1 to P12, have been marked. The petitioner/accused has chosen to cross examine PWs 6 to 10 only. Now after 8 years, since the examination of PW1, CrI.M.P.No.7296 of 2013, has been filed under Section 311 Cr.P.C to recall PW1 for cross examination. Smt. Uma Maheswari, the then Inspector of Anna Nagar All Women Police Station, Smt.Vijayalakshmi, the then Inspector of Thirumangalam All Women Police Station have not been cited as prosecution witnesses in C.C.No.12426 of 2005 on the file of learned Chief Metropolitan Magistrate. Smt. Panneerselvi, the investigation officer in the present case, cited as LW13 has been examined as PW9 and that she has also been cross examined on 27.12.2012, 04.02.2013 and 06.03.2013, respectively.

14. It is cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact for the points in issue. But it is left either for the production or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides.

15. As rightly observed by the Court below, when Smt. Uma Maheswari, the then Inspector of Anna Nagar All Women Police Station and Smt. Vijayalakshmi, the then Inspector of Thirumangalam All Women Police Station, have not been cited as prosecution witnesses and even taking it for granted that they had already enquired into the previous complaints by the wife, by registering two CSRs, one, on the file of Anna Nagar All Woman Police Station vide No.228/W5/2004 and another, on the file of Villivakkam All Woman Police Station Vide No.124/v1/WPS2004, if in the opinion of the accused/petitioner, examination of those witnesses are essential and necessary, as rightly observed by the trial Court, it is always open to the petitioner/accused to file necessary application before the Court below, citing them as defence witnesses and examine them.

16. Powers conferred under Section 311 Cr.P.C should be invoked by the Court only for strong and valid reasons and it should be exercised with caution and circumspection. Power has to be exercised only after taking into consideration the facts and circumstances of each case. Power should be exercised sparingly and only in suitable cases.

17. On the facts and circumstances of this case, the Court below has found that the examination of the two Inspectors of Police, by the prosecution is not essential to prove the prosecution case. But if the examination of the abovesaid officers is essential for a just decision of the case, the Court, in exercise of the powers under Section 311 Cr.P.C., can always summon them as defence witnesses, if any application is made by the accused.

18. Petitioner /accused cannot demand the prosecution, to produce the said witnesses and examine them on the prosecution side. Reasons assigned by the learned Chief Metropolitan Magistrate, Egmore, Chennai, in dismissing the petition in CrI.M.P.No.7296 of

2014 in C.C.No.12426 of 2005, dated 11.02.2015 are not manifestly illegal, warranting intervention in this Criminal Revision Case. Hence, the present Criminal Revision Case is dismissed.
ars

-s/d-

Assistant Registrar(CO)

Dt:6/4/2015

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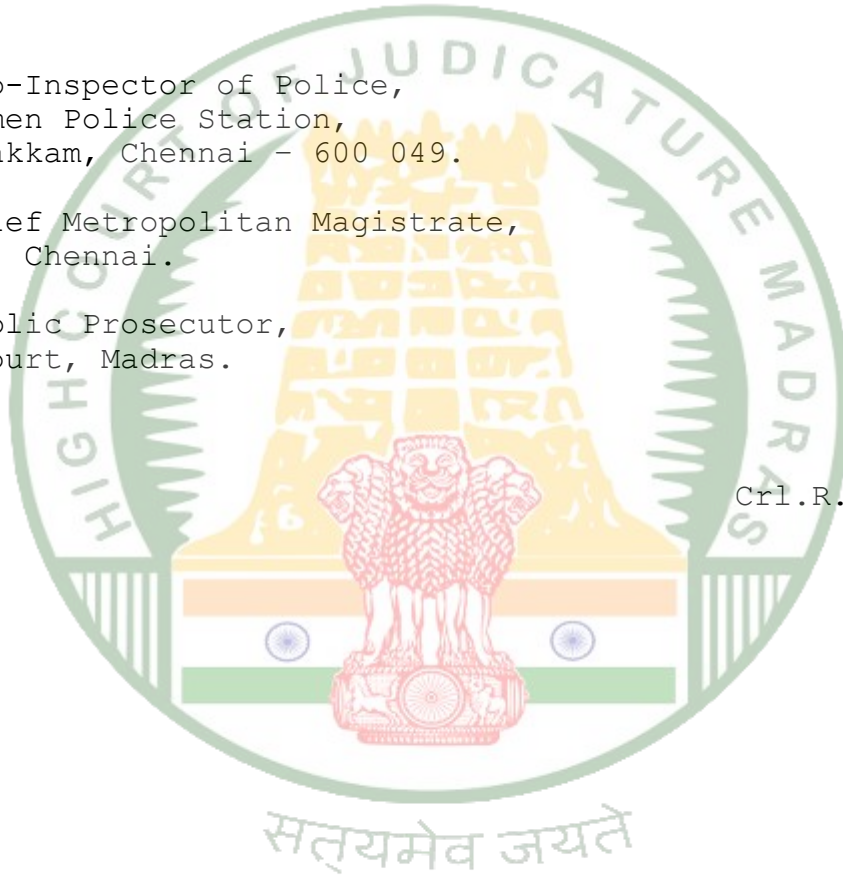
Sub-Assistant Registrar

To

1. The Sub-Inspector of Police,
All Women Police Station,
Villivakkam, Chennai - 600 049.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

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