

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.123 of 2010

Ambika

... Petitioner

vs.

1.Rajendran

2.State rep.by

the Inspector of Police, L & O,
T-4, Maduravoil Police Station,
Chennai - 602 102.

(Crime No.485 of 2003)

... Respondent

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure against the Judgment of acquittal dated 16.9.2008 rendered in S.C.No.159 of 2008 by the learned Addl.Sessions Judge cum FTC-I at Poonamallee, Tiruvellore District acquitting the first respondent herein for the offence u/s 376 IPC and prays that this Court may be pleased to call for the records in S.C.No.159 of 2008 from the file of the learned Addl.Sessions Judge cum FTC-I at Poonamallee, Tiruvellore District and exercise the powers of this Court and set aside the same.

For Petitioner : Mr.A.Shivkumar

For 1st respondent : Mr.M.Saravana Kumar

For 2nd respondent : Mr.V.Arul,
Government Advocate (Crl.Side)

OR D E R

This Criminal Revision Case is directed against the Judgment of the learned Additional Sessions Judge, Fast Track Court No.I, Poonamallee, in S.C.No.159 of 2008 dated 16.9.2008 whereby the accused was acquitted of the charge under section 376 IPC.

2. The case of the prosecution in brief is that on 4.6.2003, the petitioner's child Srimathi, aged about four years, came crying and when the petitioner enquired her, the child replied that the accused penetrated his penis in her private part. Consequently, the petitioner lodged a complaint with Maduravoil Police Station where a case in Crime No.485 of 2003 for the offence under section 376 IPC was registered and charge sheet was filed.

3. Learned counsel for the petitioner would submit that having recorded the chief examination of PW.1 to PW.3 and the defence having chosen not to cross-examine them, ought not to have permitted to recall these witnesses at a later stage and treat them as hostile witnesses. The learned counsel would further submit that having framed the charge u/s.376 IPC against the accused and the prosecution having proved its case beyond all reasonable doubt, the trial Court ought not to have acquitted the accused and therefore, the judgment of the trial Court ought to be set aside. He would further submit that medical evidence would also go to show the culpability of the accused. In such circumstances, the trial Court ought not have acquitted the accused of the charge of rape. In support of his contention, the learned counsel relied on some judgments of the Hon'ble Supreme Court.

4. On the contrary, the learned Government Advocate (Criminal Side) appearing for the second respondent would submit that the alleged incident is stated to have taken place at the age of four years of the child and now the child would have become 16 years old. At this distant point of time, if any effort is taken to order re-trial, that will be detrimental to the interest of the girl. Moreover, PW.5 has categorically deposed that there was no injury over private part of the child at the relevant point of time.

5. With regard to the contention of the petitioner that she was given a post-dated cheque, dated 20.9.2008 by one Thiru Satheesh Kumar, Advocate, drawn on Karur Vysya Bank, P.H.Road, Chennai, to retract her evidence, the learned counsel for the first respondent would submit that the junior defence counsel's name is L.Satheesh Kumar and the first respondent had not issued any such cheque to the petitioner and with an intention to extract money from the first respondent, such a false cheque was filed in the case.

6. Heard the learned counsel appearing for the parties and perused the records.

7. Having gone through the impugned judgment passed by the learned trial court, I find that the learned trial court has given cogent reasons for not finding the case of the prosecution proved against the accused/first respondent. Looking to the facts and circumstances of the case, it can easily be said that the prosecution has not been able to prove its case beyond all reasonable doubts against the accused for the offence for which he had been charged and the trial court was right in acquitting the accused/first respondent. I have no reason to dissent from the finding of acquittal recorded by the trial court, as they appear to be reasonable and plausible in the facts and circumstances of the case.

8. Accordingly, the criminal revision filed by the complainant fails and the same is hereby dismissed, after confirming the judgment and order of acquittal passed by the trial court.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

asvm

To

- 1.The Addl.Sessions Judge,
Fast Track Court - I,
Poonamallee, Tiruvellore District.
2. The Public Prosecutor,
Madras High Court.
3. The Inspector of Police, L & O,
T-4, Maduravoil Police Station,
Chennai - 602 102.

1 cc to Mr.M. Saravanakumar, Advocate, Sr. 32917

Cr1.R.C. No.123 of 2010

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