

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2015

Delivered on : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.4703 of 2015

Malar @ Dhanalakshmi

.. Petitioner

Versus

1.Inspector of Police,
All Women Police Station,
Tambaram, Chennai.

2.Parimanam
3.Ammal Thangam
4.Panneerselvam
5.Latha
6.Senthil
7.Arul

.. Respondents

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in CMP.No.10031/2014 on the file of the learned Judicial Magistrate, Tambaram and set aside the same and direct the learned Judicial Magistrate, Tambaram to permit the witnesses 1.Mr.Manoharan, S/o.Thangavel Nadar, Hindu, aged about 45yrs having office at No.365, Shivasundaram Dhall Mill, Walter Road, Somangalam Sriperumbudur 2.Ramanujam, S/o.P.Thangaraj, Hindu, aged about 50yrs residing at 4/18, Keshva Perumal Sannathi Street, Mylapore, Chennai-4 to depose in C.C.No.36 of 2007 on the file of learned Judicial Magistrate, Tambaram.

For Petitioner : M/s.Madhuri Donti Reddy

For Respondents : Mr.C.Emalias,

Addl. Public Prosecutor [for R1]

O R D E R

This petition has been filed to set aside the order dated 05.02.2015 passed by the learned Judicial Magistrate, Tambaram in CMP.No.10031 of 2014 in CC.No.36 of 2007 and to direct the learned Judicial Magistrate, Tambaram to permit the witnesses, namely, Manoharan and Ramanujam to depose in C.C.No.36 of 2007.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the 1st respondent and perused the materials placed on record.

3. On a complaint lodged by Malar [petitioner herein], the respondent police registered a case in Crime No.23 of 2006 under Section 498A, 406, 506/2 IPC read with Section 4 of Dowry Prohibition Act against her husband and in-laws. After completing the investigation, the Police have filed a Final Report before the learned Judicial Magistrate, Tambaram, which was taken on file as C.C.No.36 of 2007 and the trial has dragged from 2007 to 2015.

4. Malar [the petitioner/defacto complainant] appears to have been filed an application under Section 301 Cr.P.C before the Trial Court for assisting the prosecution and that has been allowed. After framing of charges, trial commenced with the examination of Malar in-chief on 24.03.2008 and she was cross-examined. Other witnesses were examined and ultimately, the Investigating Officer was cross-examined on 05.07.2013 and after the examination of the accused under Section 313 Cr.P.C, the case was getting adjourned for the defense to produce their witness.

5. At that juncture, Malar has filed an application in CMP.No.10031 of 2014 in C.C.No.36 of 2007 under Section 311 Cr.P.C for examining one Manoharan and Ramanujam as prosecution witnesses on her side. The Additional Public Prosecutor [Grade II], who was in charge of the case appears to have stated no objection to the petition filed by Malar for the reason best known to him and thereby, he abdicated his responsibility as leader of the prosecution case and relegated it to the defacto complainant.

6. Be that as it may, the Trial Court heard the rival contentions and dismissed the petition filed by Malar challenging which, Malar is before this Court.

7. This Court is unable to understand what locustandi Malar has got to file a petition under Section 311 Cr.P.C in a trial instituted upon a police report. No doubt, she can assist the prosecution and submit written submissions during the culmination of the trial. In this case, the trial commenced in the year 2008 and the accused were examined under Section 313 Cr.P.C in the year 2014 and thereafter, the defacto complainant has filed the petition before the Trial Court without even giving the reasons, as to how the evidence of the said Manoharan and Ramanujam will be relevant for the just decision of the case.

8. Under Section 311 Cr.P.C, the Trial Court no doubt has the power to summon any witness and examine him at any stage of the proceedings for the just decision of the case. In this case, it is obvious that the Malar [defacto complainant] has filed an application

under Section 311 Cr.P.C only for protracting the trial, so that the Damocles Sword is kept hanging over the head of the accused indefinitely.

In the result, this petition is devoid of merits and is accordingly, dismissed.

gya

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate,
Tambaram.

2.The Chief Judicial Magistrate,
Chengalpet.

3.The Inspector of Police,
All Women Police Station,
Tambaram, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mrs.Madhuri Donti Reddy, Advocate SR 36755

gj(co)
prk29/7

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