

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.12767 of 2016

and

Cr1.MP.No.6671 of 2016

Maruthapillai

...Petitioner

Vs.

State of Tamil Nadu
Rep.by the Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal
(Crime No:489 of 2009)

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 20.04.2016 made in Cr.M.P.No.165 of 2016 in S.C.No.27 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.C.Emalias
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 20.04.2016 made in Cr.M.P.No.165 of 2016 in S.C.No.27 of 2015 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is seen that the petitioner is facing prosecution in S.C.No.27 of 2015 under Section 376 IPC. The allegation against this petitioner is that he has committed rape on a mute girl. During the course of investigation, the police had requisitioned the service of one C.R.Latha, who had undergone

training in Holy Cross Service Society, Trichy, in teaching Deaf and Blind children. After completing the investigation, the police filed a final report, in which, C.R.Latha has also been cited as a prosecution witness. The victim girl was examined as P.W.3 and the trial Court requisitioned the service of the said C.R.Latha for interpreting the evidence of the victim girl. The Chief examination of the victim girl was recorded on 27.08.2015 with the Assistance of the said C.R.Latha and in the presence of the accused, his counsel, Public Prosecutor and other Staff of the Court in-camera. The petitioner did not cross examine the victim girl (PW3) on 27.08.2015 and the learned Judge has recorded "no cross". Thereafter, the petitioner filed a petition in CrI.M.P.No.459 of 2015 under Section 311 Cr.P.C to recall the victim girl for cross-examination, which was allowed by the trial Court.

4. At that juncture, the petitioner filed an application in CMP.No.165 of 2016 in S.C.No.27 of 2015 to efface the evidence or strikeout the testimony of PW3 on the ground that her deposition was not recorded in terms of Section 119 of the Evidence Act and the judgment of this Court in Mariyadoss Vs. State by Inspector of Police, All Women Police Station, Kumbakonam reported in 2014 (2) MWN (Cr.) 321. The trial Court dismissed the petition on 20.04.2016, challenging which, the petition is before this Court.

5. Mr. K.S.Karthik Raja, learned counsel appearing for the petitioner/accused submitted that C.R.Latha was part of the investigation and helped the police and therefore, the trial Court ought not to have requisitioned her service but should have called for an expert from the list of designated persons given by High Court Circular in R.O.C.No.1729/2010/RR dated 02.06.2010.

6. In the considered opinion of this Court, the said circular is only directory in nature and is not mandatory and failure to follow the circular will not per se vitiate the proceedings. In order to satisfy the judgment of this Court, this Court perused the evidence of PW3 that has been recorded and found that the recording of the chief examination by C.R.Latha, does not suffer from any serious infirmity.

7. Admittedly, the raped victim girl cannot be subjected to harassment by making her repeat the story every time on demand by the accused. The trauma suffered by the rape victim will continue throughout life span and it will be travesty of justice, if an action replay starts. In fact, the accused should have cross-examined the rape victim on the same day, when she was examined in chief, following the judgment of the Hon'ble Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [CrI] 288. When the victim girl was examined in chief, the petitioner/accused knew that C.R.Latha

would be the interpreter and he did not object to it. Thereafter, the petitioner/accused filed an application to recall the victim and it was allowed by the trial Court. At that juncture, he has come up with this petition for striking down the testimony.

8. In the considered opinion of this Court, the order passed by the trial Court does not suffer from serious infirmity warranting, interference. Hence, the criminal original petition is dismissed. However, the trial Court is directed to comply with the circular in ROC No.1729/2010/RR dated 02.06.2010 and the judgment of this Court in Mariyadoss Vs. State by Inspector of Police, All Women Police Station, Kumbakonam reported in 2014 (2) MWN (Cr.) 321. While recording the cross examination of the rape victim girl, it shall be done on the date fixed by the trial Court within a period of one month from the date of receipt of a copy of this order. If the petitioner adopts dilatory tactics, it is open to the trial Court to remand the petitioner to custody as per the law laid down by the Hon'ble Supreme Court in State of Uttarpradesh Vs Shambu Nath Singh reported in JT 2001[4] SC 319. Consequently, connected miscellaneous petition is closed.

sms

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge, Fast Track Mahila Court,
Namakkal.

2.The Inspector of Police,
Mohanur Police Station,
Mohanur, Namakkal

3.The Public Prosecutor,
High Court, Chennai.

+ 1 cc to Mr.K.S.Karthik Raja, Advocate Sr 34160

KR/4/7/16

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