

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.13316 of 2016

Parvathammal

Petitioner

Vs

The Deputy Superintendent of Police
Crime Branch CID
Coimbatore Range
(Thalavadi P.S.Cr.No.90/2000)

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order in C.M.P.No.28/2016 in S.C.No.51/2011 dated 23.03.2016 on the file of the learned III Additional District cum Sessions Judge, Gobichettipalayam, Erode District.

For petitioner : Mr.R.Karthikeyan
For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

O R D E R

This petition has been filed to set aside the order in C.M.P.No.28/2016 in S.C.No.51/2011 dated 23.03.2016 on the file of the learned III Additional District cum Sessions Judge, Gobichettipalayam, Erode District.

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

3. It is common knowledge that Rajkumar, a Kannada actor and others were abducted by the Forest brigand Veerappan and was kept in captivity for a long time until they were released by the abductors. In this regard, a case in Cr.No.90/2000 was registered against some persons and after completing the investigation, a Final Report has been filed and the case is now pending in S.C.No.51/2011 before the III Additional District

and Sessions Judge, Gobichettipalayam. In the meantime, Veerappan and Rajkumar had passed away and ten persons are facing trial. While so, the Investigating Officer filed CMP No.28/2016 in S.C.No.51/2011 for dispensing with the examination of the petitioner/Parvathammal, the widow of Rajkumar, on the ground that she is not medically fit to give evidence, as she is suffering from Alzheimer. The trial Court has dismissed the petition on 23.03.2016, challenging which Parvathammal is before this Court.

4. In the ordinary circumstances, it is not necessary for the prosecution to file an application for dispensing with the examination of an accused, inasmuch as the trial before the Sessions Court is conducted by a prosecutor u/s 225 Cr.P.C. and a discretion is vested with the prosecutor to examine or give up witnesses as held by the Supreme Court in Hukam Singh vs. State of Rajasthan [2000 AIR SCW 4416] and Banti @ Guddu vs. State of Madhya Pradesh [2003 AIR SCW 5979]. However, the trial Court need not be a mute spectator and tow the line of the prosecutor if he seeks to dispense with a witness, which in the opinion of the Court is just and essential for the case. Section 311 Cr.P.C. is a plenary power that is vested with the Court to examine any person as a witness any time and this power cannot be abridged either by the accused or by the prosecution. In this case, a genuine request appears to have been made by the prosecution contending that Parvathammal is suffering from Alzheimer and therefore, no purpose would be served by bringing her all the way from Karnataka for giving evidence, as she may not even be able to depose to the facts that had taken place in the year 2000. A realistic approach should be adopted by this Court in cases of this nature. If there are other evidences for the same fact, it is not necessary for the prosecution to duplicate evidence and increase the number of witnesses in the light of Section 134 of the Evidence Act. The operative portion of the trial Court order is silent on the question as to whether the prosecution has examined the witnesses who were present with Parvathammal when Rajkumar was abducted and that whether the evidence of those persons would be insufficient to arrive at a just decision in the case.

5. Admittedly, Parvathammal was not abducted by the accused and the abduction had taken place in her presence and in the presence of P.Ws.2 to 4, who are friends of Late Rajkumar and who were said to be present at the house at the time of the abduction. It is common ground that the accused had abducted Rajkumar and Nagappa and both of them are not alive today. Therefore, the prosecution should have to prove the factum of abduction which can be established either by the person who was abducted or by the person who had seen the abduction. The trial Court has not given a finding that the evidence of P.Ws.2 to 11 are prima facie insufficient to prove the factum of abduction.

In the result, this petition is allowed and the order passed by the trial Court is set aside. The matter is remitted to the trial Court for fresh consideration as to whether the evidence of Parvathammal would be essential in the light of the assertion that she suffers from Alzheimer. Liberty is given to the prosecution to establish the fact that Parvathammal is not in a position to give evidence by examining the physician or any other person who is treating her. The entire exercise shall be completed within four weeks from the date of receipt of a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

To

- 1.The Deputy Superintendent of Police
Crime Branch CID
Coimbatore Range.
- 2.III Additional District cum Sessions Judge,
Gobichettipalayam, Erode District.
- 3.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.R.Karthikeyan Advocate sr.35353

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