

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.5156 of 2015
and M.P.No.1 of 2015

Sivanandam

..Petitioner

Vs

State rep by

1.The Inspector of Police
Adhiyamankottai Police Station
Adhiyamankottai
Dharmapuri District.
(Crime No.508 of 2012)

..1st Respondent

2.Rukumani

..2nd Respondent/
Defacto Complainant

[R2 impleaded as per order of
this Court dt.21.06.2016 in
Cr1.MP.NO.6660/16 in Cr1.OP.5156/15]

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records and set aside the order
passed by the learned Sessions Judge, Fast Track, Mahila
Court, Dharmapuri in CMP No.330 of 2014 in S.C.No.50/2014
dated 21.01.2015.

For Petitioner : Mr.V.Rajamohan
For R1 : Mr.C.Emalias,
Addl.Public Prosecutor
For R2 : Ms.Thangavadhana Balakrishnan

O R D E R

This petition has been filed to to call for the records
and set aside the order passed by the learned Sessions Judge,
Fast Track, Mahila Court, Dharmapuri in CMP No.330 of 2014 in
S.C.No.50/2014 dated 21.01.2015.

2. Heard the learned counsel for the petitioner; the
learned Additional Public Prosecutor appearing for the State
and the learned counsel for the de facto complainant.

3. It is seen that the petitioner is facing prosecution
in S.C.No.50 of 2014 before the Fast Track, Mahila Court,
Dharmapuri for an offence under Section 302 IPC, for allegedly

murdering his wife. The police had recorded the statement of Monisha, the daughter of the accused, who is said to have been present at the time of occurrence. During trial, Monisha died and therefore, the learned Public Prosecutor filed an application under Section 311 Cr.P.C. for examining her sister Lavanya, which was allowed by the trial Court after hearing the accused, aggrieved by which the accused is before this Court.

4. Learned counsel for the accused submitted that the police have not even recorded the 161(3) Cr.P.C. statement of Lavanya and that there is no material to show that Lavanya was an eye witness. That apart, he contended that Lavanya was in the custody of her grandparents and therefore, there is every possibility of Lavanya being tutored by them to speak against the accused.

5. Per contra, the learned Additional Public Prosecutor and the learned counsel appearing for the de facto complainant strongly supported the order passed by the Court below and stated that, even in the statement of Monisha recorded by the police, she has stated that Lavanya was by her side at the time of the incident.

6. Be that as it may, in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C., and has held that the Court has got a plenary power to summon any witness at any time before the judgment is delivered, if the Court is of the opinion that the evidence of such a witness is just and essential for the case.

7. It is trite that non-recording of the 161 Cr.P.C. statement of a person is not a bar for examining him as a witness in the Court. In this case, this Court is of the view that the evidence of Lavanya would be just and essential to determine the facts in issue. Therefore, this Court does not find any serious infirmity in the order passed by the Court below allowing the application under Section 311 Cr.P.C. for examining Lavanya.

In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed. Anything observed above is only for the limited purpose of deciding this petition and the trial Court shall proceed to apprise the evidence of Lavanya on its own strength.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Adhiyamankottai Police Station
Adhiyamankottai
Dharmapuri District.

2. Sessions Judge, Fast Track, Mahila Court,
Dharmapuri.

3.The Public Prosecutor, High Court, Madras.

+1cc to M/s. Thangavadhana Balakrishnan, Advocate,
S.R.No.37891

+1cc to Mr.N. Mohideen Basha, Advocate, S.R.No.37831

PV(CO)
EU(11/07/2016)

CrI.OP No.5156 of 2015



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