

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.20571 of 2016

&

CrI MP.No.9588 of 2016

Mahalakshmi @ Prasanalakshmi

... Petitioner

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Arakkonam,
Vellore District.
(Crime No.22 of 2010)

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed by the Judicial Magistrate, Arakkonam, Vellore District in C.M.P.No.2484 of 2016 in C.C.No.160 of 2011 dated 11.08.2016 and allowing the petition under Section 311 Cr.P.C. filed by prosecution.

For Petitioner : Mr.I.Paul Noble Devakumar

For Respondent : Mr.C. Emalias
Additional Public Prosecutor

O R D E R

This petition is filed to set aside the order passed by the Judicial Magistrate, Arakkonam, Vellore District in C.M.P.No.2484 of 2016 in C.C.No.160 of 2011 dated 11.08.2016 and allowing the petition under Section 311 Cr.P.C. filed by prosecution.

2. Heard Mr.I.Paul Noble Devakumar, learned Counsel for the petitioner, and Mr.C.Emalias, learned Addl. Public Prosecutor for the State.

3. It is seen that this petitioner is facing prosecution for offences under Sections 406, 420 and 109 of I.P.C. in C.C.No.160 of 2011 before the Judicial Magistrate, Arakkonam.

4. The crux of the prosecution case is that the first petitioner had undergone a form of marriage with the defacto complainant, and after living with her and receiving a sum of Rs.5,10,500/- from her, deserted her and repudiated marriage.

5. In the light of the aforesaid allegation, charges were framed against the petitioner and prosecution examined seven witnesses. The accused were questioned under Section 313 Cr.PC. and thereafter, two defence witnesses were examined on behalf of the accused, namely DW-1, & DW-2. In the cross examination of DW-2, specific question was put to DW-2 about the factum of the receipt of money through his Indian Bank Account, for which he completely denied. He not only denied the receipt of money, but also the factum of having account itself in the Indian Bank.

6. Under such circumstances, the prosecution filed a petition in CrI.M.P.No.2484 of 2016 in C.C.No.160 of 2011 under Section 311 Cr.P.C. for examining the Branch Manager of Indian Bank to prove the fact that DW-2 was having account in Indian Bank and that the transaction pertaining to this case would reflect in the said account. The accused opposed the petition, despite which the Trial Court by order dt.11.08.2016, allowed the petition, challenging which the accused is before this Court.

7. Learned Counsel for the accused submitted that after the accused has been examined u/s. 313 Cr.PC, it is not open to the prosecution to examine a fresh witness for the purpose of filling up the lacuna. He also submitted that the police have not recorded the statement of the Branch Manager during investigation and therefore, the accused cannot be taken by surprise. In support of his contention he relied upon the judgment of this Court in Govinda Reddy .vs. State {1991 LW(CrI) 42} & A.G. Vs. Shiv Kumar Yadav & another {2015 (9) scale 649}.

8. Per contra, Mr.C.Emalias, Addl.Public Prosecutor submitted that the prosecution is seeking examine an official witness namely the Branch Manager Of Indian Bank and is not introducing a total stranger to thwart the defence of the accused.

9. This Court gave its anxious consideration to the rival submissions.

10. The law relating to Sec.311 Cr.P.C. has been fairly settled by the Supreme Court AG -vs- Shiv Kumar Yadav (cited supra), wherein the Court has laid down the parameters for recalling witnesses, who have already been examined by the prosecution. This judgment was rendered in the backdrop of attempts by the accused to keep recalling prosecution

witnesses for tiring them out on some true text or the other. In that context, the Supreme Court has given certain guidelines in para 29 of the said judgment. In Govinda Reddy's case, (cited supra) the prosecution had examined PW-3 and once again filed an application under Section 311 Cr.PC to recall PW-3 for further examination in chief and in that context, this Court held that the prosecution cannot be permitted to fill in a lacuna.

11. In the present case, accused it was the accused who had examined DW-1 & 2. In the course of cross examination of DW-2, he appears to have denied the very existence of an account in the Indian Bank, which warranted the prosecution to file the present application under Section, 311 Cr.PC. to examine the Bank Manager.

12. Recording of 161 statement of a person is not a sine qua non for examining him as a witness in a criminal trial. In the facts and circumstances of this case, the evidence of the Bank Manager is very much relevant for the just decision of the case, inasmuch the prosecution cannot close its eyes to a piece of evidence that has come to its notice during the cross examination DW-2.

13. In Rajendra Prasad Vs Narcotic Cell - 1999(6) SCC 110, the Supreme Court has stated that whenever an application is filed under Section 311 Cr.PC by the prosecution the defence will always cry foul by saying that it has been filed for filling the lacuna, but that plea should not over awe the Court.

14. However, a duty is cast upon the Court to analyse the prayer made by the parties and find out if the examination of a person as a witness is relevant for the just decision of the case. In the present case, the Trial Court has held that the examination of the Branch Manager, Indian Bank will be relevant in the teeth of the accusation against the petitioner. This Court does not find any infirmity in the order passed by the Trial Court.

15. After examining the additional witnesses, it is imperative for the trial Court to examine the accused under Section 313 Cr.PC. '73 for him to explain any incriminating circumstances appearing against him. In the result, this petition is devoid of merits and the same is dismissed. Connected Miscellaneous petition closed.

Sd/-

Assistant Registrar(CCC)

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To

1. The Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate,
Arakkonam, Vellore District.
4. Do Through the Chief Judicial Magistrate,
Vellore District.

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VD(CO)
CA(05/10/2016)



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