

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.24173 of 2016

&

Crl.M.P. Nos.11510 & 11511 of 2016

1 Sabari @ Sabarinathan

2 Periyasami

3 Aramu

....Petitioners

Vs.

State represented by its
Inspector of Police
Belukurichi Police Station
Namakkal District
(Crime No.261 of 2014)

....Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to call for the records in C.M.P. No.355 of 2016 in Special C.C. No.55 of 2015 dated 07.09.2016 on the file of the Sessions (Fast Track Court) Judge/Mahila Judge, Namakkal and set aside the same.

For Petitioners : Mr. Karthikeyan
for Mr. T. Shanmugam

For respondent : Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records in C.M.P. No.355 of 2016 in Special C.C. No.55 of 2015 dated 07.09.2016 on the file of the Sessions (Fast Track Court) Judge/Mahila Judge, Namakkal and set aside the same.

2 On the complaint lodged by one Manikkam (P.W.1), the respondent police registered an FIR in Crime No.261 of 2014

and after completing the investigation, filed a final report in Special S.C. No.55 of 2015 against Sabari @ Sabarinathan (A1), Periyasami (A2) and Aramu (A3), challenging which, the said accused are before this Court.

3 It is the case of the prosecution that a minor girl "X", who is the grand daughter of P.W.1, was abducted by the first accused and was sexually abused. The accused 2 and 3 are the parents of the first accused.

4 Trial began before the Mahila Court on 23.05.2016 with the examination of Manikkam (P.W.1), "X" (P.W.2) and Jothi (P.W.3). The petitioners/accused did not cross-examine P.W.1 and P.W.3, whereas, they cross-examined P.W.2. Thereafter, the prosecution examined several witnesses, who also, were not cross-examined by the petitioners/accused. While so, the petitioners/accused filed C.M.P. No.355 of 2016 in Special S.C. No.55 of 2015 for recalling P.W.1 and P.W.3, which was dismissed by the Trial Court by order dated 07.09.2016, challenging which, the petitioners/accused are before this Court.

5 Heard Mr. Karthikeyan, learned counsel representing Mr. Shanmugam, learned counsel for the petitioners/accused.

6 Mr. Karthikeyan submitted that if the petitioners/accused are not afforded one more opportunity to cross-examine the accused, then, they may suffer from serious penal consequences.

7 In opposition, Mr. C. Emalias, learned Additional Public Prosecutor submitted that there is no infirmity in the order passed by the Court below and as such, the same does not warrant any interference by this Court.

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

9 On a reading of the petition filed by the petitioners/accused under Section 311, Cr.P.C. before the Trial Court, it is seen that they have averred therein that their counsel-on-record had gone to Trichy District Court to conduct a case and hence, he could not cross-examine the above said witnesses.

10 In this context, it is worth referring to Proviso to Section 309, Cr.P.C., which reads as under:

"Provided also that--

a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

11 In sync with the above provision, the Supreme Court has given a detailed judgment in Priyanka Srivastava and another vs. State of U.P. and others [(2015) 6 SCC 287], laying down the law under Section 311, Cr.P.C. That apart, this Court perused the evidence of the victim girl "X" (P.W.2). She has not supported the prosecution case at all and has turned hostile.

12 In view of the aforesaid legal and factual background, this Court does not find any infirmity, much less any serious infirmity, in the order passed by the Court below.

In the result, this Criminal Original Petition is dismissed. Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

cad

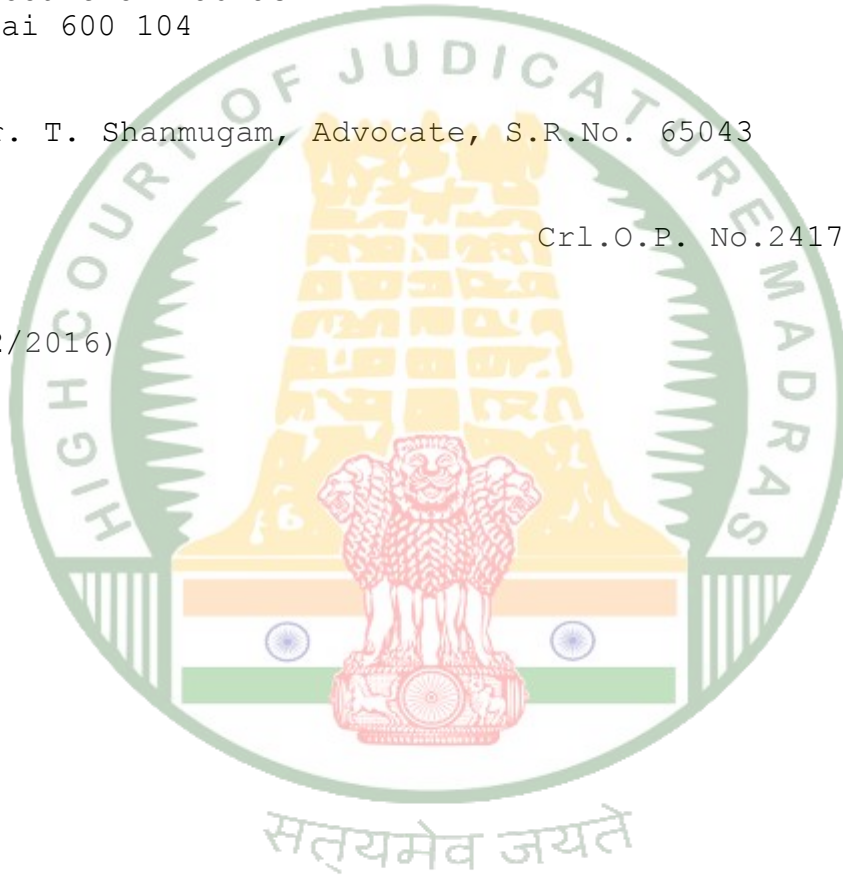
To

- 1 The Inspector of Police
Belukurichi Police Station
Namakkal District
- 2 The Sessions (Fast Track Court) Judge/Mahila Judge
Namakkal
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr. T. Shanmugam, Advocate, S.R.No. 65043

CrI.O.P. No.24173 of 2016

NR (CO)
PSI (05/12/2016)



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