



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Crl.O.P.(MD).No.15965 of 2016

Yesu Thanga Latha

.. Petitioner/Accused

Vs.

1.The State of Tamilnadu

Rep. by the Inspector of Police,
Suchindrum Police Station,
Kanyakumari
Crime No.209/2007

2.Parvathy

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to withdraw the C.A.No.46/2009 on the file of the District Special Mahila Court, Kanyakumari District, Nagercoil camp and transfer the same to any other District Court.

For Petitioner : Mr.S.Muthukrishnan

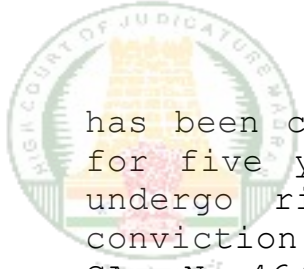
For respondent : Mr.A.P.Balasubramani for R1
Government Advocate (Criminal side)

ORDER

This application has been filed seeking a direction to withdraw the C.A.No.46/2009 on the file of the District Special Mahila Court, Kanyakumari District, Nagercoil camp and transfer the same to any other District court.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the 1st respondent.

3.It is the case of the prosecution that one Suba @ Chanra Subalakshmi, W/o. Moris, has committed suicide on 29.12.2006. In respect of the same, originally, a case has been registered under Section 174 Cr.P.C., which was altered into Section 306 IPC, after the report of the Revenue Divisional Officer and the petitioner services in the case. The case has been taken on file in S.C.No.28 of 2008 on the file of the Chief Judicial Magistrate, Nagercoil and on conclusion of trial, the petitioner



has been convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for 6 months. Challenging the conviction and sentence, the petitioner has preferred an appeal in CA No.46/2009 before the District Special Mahila Court, Kanyakumari District at Nagercoil. While so, on 11.08.2016, when the appeal was posted for arguments, the counsel for the appellant/accused did not appear on account of boycott and therefore, the matter has been adjourned to 30.08.2016 for judgment.

4. In the meantime, it is stated that on 24.08.2016, a petition has been filed to reopen and rehear the appeal in CA No.46/2009. It is alleged that the appellate Court has refused to take the application on file and returned the same and therefore, this petition has been filed for transfer of the case to any other District Court.

5. The learned counsel for the petitioner submitted that the non appearance on 11.08.2016 was not wilfull, but it was on account of unavoidable circumstances and the appellate Court should have given an opportunity of hearing to the appellant/accused, especially, when the conviction has been imposed on the appellant, for a period of five years. It is also represented that the matter has been settled between the de-facto complainant and the accused and the compromise should be taken into account by the appellate Court.

6. The learned counsel for the petitioner/accused relies upon the provision of Section 320(5) of the Code of Criminal Procedure, which is as follows:

"320(5).When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard"

7. The fact remains that section 306 IPC is a non compoundable one. Be that as it may, the case had ended in conviction and for the non appearance of the learned counsel for the appellant/accused, the plea of the appellant for rehearing cannot be denied. Under such circumstances, the criminal original petition is disposed of with directions. The District Special Mahila Court, Kanyakumari, Nagercoil camp shall give an opportunity of hearing to the learned counsel for the accused/appellant in CA No.46/2009. Once a petition for rehearing is filed before the lower appellate Court, rehearing shall be given between 01.09.2016 and 16.09.2016 and the appellate Court shall pass orders after hearing the learned counsel for the



appellant. Consequently connected Miscellaneous petition is closed.

Sd/
Assistant Registrar(AS)

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Sub Assistant Registrar.

To

- 1.The Judge, District Special Mahila Court,
Kanyakumari District, Nagercoil
- 2.The Inspector of Police,
Suchindrum Police Station,
Kanyakumari
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

Crl.O.P (MD) No.15965 of 2016
30.08.2016

RR
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