



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

CrI.O.P.(MD) No.23063 of 2016

and

CrI.M.P(MD)No.12125 of 2016

Balasubramanian

:Petitioner/Respondent/Accused

-vs-

State rep. by

The Inspector of Police,

Thanjavur Medical College Police Station,

Thanjavur, Thanjavur District. : Respondent/Petitioner/

(Crime No. 165 of 2012)

Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order, dated 14.11.2016 passed in Cr.M.P.No.789 of 2016 in S.C.No.181 of 2014 on the file of the learned Mahila Court (Fast Track Mahila Court), Thanjavur, Thanjavur District.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.A.P.Balasubramani
Govt. Advocate (CrI. Side)

O R D E R

This petition has been filed to call for the records and to set aside the order, dated 14.11.2016 passed in Cr.M.P.No.789 of 2016 in S.C.No.181 of 2004 by the Mahila Court (Fast Track Mahila Court), Thanjavur.

2.The facts, which are necessary for the disposal of the case, are that the respondent police filed a petition under section 311 of Cr.P.C before the trial court to examine one Vinith, who is the son of the deceased. The trial court, after considering the facts and circumstances of the case, has allowed the petition filed by the prosecution and permitted to examine the proposed witness Vinith, now aged about 7 years. Aggrieved by the same, this petition is filed by the petitioner.

<https://hcservices.ecourts.gov.in/hcservices>
3.The learned counsel appearing for the petitioner would submit that the the prosecution has sought for to examine Vinith who at the time of the alleged occurrence was only 3 years of age



and that the said Vinith was not examined during investigation and that now the examination of the said witness would not be relevant to arrive at a just decision in this case and that the trial court has committed a grave illegality in allowing the petition filed by the respondent police. Hence, he prayed that the impugned order passed by the trial court has to be set aside and this petition has to be allowed.

4.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that the trial court after considering the facts and circumstances of the case, has allowed the petition filed by the respondent police, which is perfectly valid in law and hence, he prayed that the petition filed by the petitioner has to be dismissed.

5.Heard both sides and perused the materials available on record.

6.It is seen from the records that in the final report filed by the prosecution, the proposed witness Vinith was not cited as a witness and no statement was recorded from the said proposed witness, at the time of alleged occurrence.

7.It is admitted by the prosecution that the said Vinith was aged 3 years at the time of occurrence and now his age is 7 years. Further, the prosecution has not mentioned any valid reason to examine the new witness after a long time. In view of the above circumstances, this court is of the considered view that the trial court without considering nature of case and the age of the proposed witness Vinith, who was aged about 3 years at the time of the alleged occurrence, has allowed the petition filed by the prosecution to examine the minor boy, which is not maintainable in law. Hence, the impugned order, dated 14.11.2016 passed by the trial court is liable to be set aside.

8.In the result, this petition is allowed and the order, dated 14.11.2016 passed in Cr.M.P.No.789 of 2016 in S.C.No.181 of 2014 by the Mahila Court (Fast Track Mahila Court), Thanjavur is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar



To:

1.The Judge, The Mahila Court (Fast Track Mahila Court),
Thanjavur.

2 The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur, Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.A.Thiruvadi Kumar, Advocate, SR.No. 83426

Cr1.O.P.(MD) No.23063 of 2016
23.12.2016

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