

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2018

DELIVERED ON: 29.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.116 of 2018
and
Crl.M.P.No.836 of 2018

Suresh Kumar

... Petitioner

vs.

The State,
rep. by Inspector of Police,
Rasipuram Police Station,
Rasipuram,
Namakkal District.
(Crime No.493 of 2016)

... Respondent

Criminal Revision Case is filed under sections 397 and 401 Cr.P.C. to set aside the order dated 19.12.2017 passed in C.M.P.No.653 of 2017 in Special C.C.No.32 of 2016 on the file of Sessions Judge (Fast Track Mahila Court), Namakkal and to allow the Criminal Revision Petition.

For Petitioner : Mr.C.Prabakaran
for M/s.W.Camyles Gandhi

For Respondent : Mr.G.Ramar
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the order passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal in Crl.M.P.No.653 of 2017 in Special C.C.No.32 of 2016, dismissing the petition filed by the petitioner under Sections 45 and 47 of the Indian Evidence Act.

2. The petitioner is accused, who is facing the trial in Special C.C.No.32 of 2016. The petitioner has filed the petition under Sections 45 and 47 of the Indian Evidence Act seeking to send for letters written by the complainant by using her blood with the blood sample collected from her to the forensic science department and also compare the love letters written by the complainant along with the hand writing of the complainant at present and also the signature found in her statement along with the signature found in the deposition given by her in Court.

3. The trial Court dismissed the petition on the ground that P.W.1 denied that the note books shown to her were not belong to her and when the note books itself not belong to the complainant, if it is compared it will not yield advantage for the defence side. The trial Court has also held that the note books belong to the complainant have to be proved first by the defence side and through whom the note books came to the hands of defence side. The trial Court also held that in order to drag on the proceedings, the petitioner has filed the petition and thus dismissed the petition. Challenging the same, the petitioner has filed this revision case.

4. I heard Mr.C.Prabakaran for M/s.W.Camyles Gandhi, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Criminal Side) for the respondent and also perused the materials available on record.

5. The petitioner was charged under Section 11 read with Section 12 of the POCSO Act and Section 305 read with 116 of IPC. The case of the petitioner as could be seen from the records is that the complainant only compelled the petitioner to love her. Since the complainant was minor, the petitioner refused to accept her love. Despite refusal, the complainant had written love letters by using her blood on several pages. When the above said fact was brought to the knowledge of the family members of complainant, the elder mother of the complainant viz., Valarmathdi and her uncle Ramesh warned the complainant. Out of such warning only, the complainant consumed poison. But on the contrary, a false case was given against the petitioner as such he only compelled the complainant to love and consumed poison.

6. According to the petitioner, in the case on hand, the trial has begun and the complainant was examined as P.W.1. In her evidence, P.W.1 has stated that she has no objection for comparing her blood sample. In order to prove his innocence, the petitioner has filed the petition seeking to compare the

hand wittings of the complainant found in the love letters and also to compare the letters written by her by using her blood with her sample blood collected.

7. The prayer of the petitioner was objected by the respondent stating that the complainant had not written any love letter with her blood and a mere admission of the complainant for taking blood sample itself was not a valid ground for filing the petition. In order to protract the proceedings, the petitioner has filed the petition. According to the respondent, after analysing the materials available on record, the trial Court has rightly dismissed the petition filed by the petitioner and there is no need to interfere with the same.

8. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioner.

9. The petitioner was facing the trial of the case foisted against him under Section 11 read with 12 of POCSO Act and Section 305 read with 116 of IPC. In the case on hand, the trial has begun and the prosecution examined the complainant as P.W.1 and also cross-examined by the petitioner side.

10. The case of the petitioner is that he has not committed any crime and the complainant only compelled him to love her and she had also written several love letters to him. The complainant had written love letter by using her blood on several pages. The petitioner has also produced by way of additional typed set of papers the alleged love letters said to have been written by the complainant. On a perusal of the additional typed set of papers, this Court finds that several letters were written by the complainant Nivedha and in the above said letters, the name of the petitioner was found place.

11. In order to prove that the complainant got love affair with the petitioner and in that course only, she had written love letters to him and by sending those letters for comparison of her signatures with the admitted signatures and a report from the forensic science department would prove that the complainant has only compelled the petitioner to love her. This Court finds some force in the submission of the petitioner.

12. The possession of those letters by the petitioner assume much importance in this matter. If really the complainant had not written such letters, how the petitioner has got possession of those letters and the above said fact could be decided only at the time of trial. However, since the petitioner is facing with the trial, if the letters written by the complainant to the petitioner were send for comparison, no

prejudice would be caused to the complainant.

13. In criminal prosecution, the accused has got every right to prove his innocence by adducing evidence. In order to prove his innocence only, the petitioner has filed the petition to send for the love letters written by the complainant to the forensic science department for comparison and report. In fact, in her cross-examination, P.W.1 admitted that she has no objection in sending the signatures found in the note books for comparison with the admitted signatures found in the records of the Court.

14. In order to render justice and also in order to disprove the charges levelled against the petitioner, the petitioner had filed by the petition under Sections 45 and 47 of the Indian Evidence Act and the same can be entertained for the purpose of obtaining an expert opinion.

15. The trial Court failed to note that the petitioner who being the accused ought to have provided sufficient opportunity for adjudicating his case as the burden is heavily lies upon him in a charge under POCSO Act is concerned and not like the other IPC offences wherein the prosecution has to prove the case. As stated supra, in order to afford an opportunity enabling the petitioner to defend his case in a manner known to law, the petition filed by the petitioner under Sections 45 and 47 of the Indian Evidence Act is liable to be allowed. Moreover, sending the documents in question to the forensic science department and obtaining report from them will be helpful to the Court to decide the case on merits.

16. In the result,

(a) The Criminal Revision Case is allowed by setting aside the order in CrI.M.P.No.653 of 2017 in Special C.C.No.32 of 2016 dated 19.12.2016 on the file of the learned Court of Sessions Judge (Fast Track Mahila Court), Namakkal;

(b) The learned Sessions Judge (Fast Track Mahila Court), Namakkal is hereby directed to refer the letters (mentioned in the petition in CrI.M.P.No.653 of 2017) written by P.W.1 to the hand writing expert's opinion along with the signatures available in the deposition of P.W.1 within a period of two weeks from the date of receipt of a copy of this order by directing the hand writing expert to submit the report within a period of eight weeks from the date of referring the matter.

(c) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vs

To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

2. Inspector of Police,
Rasipuram Police Station,
Rasipuram,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.C.Prabakaran, Advocate SR.No.59710

Crl.R.C.No.116 of 2018 and
Crl.M.P.No.836 of 2018

KAN (CO)

GMV (14/11/2018)

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