

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 20.08.2018
CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20300 of 2018
and CRL.M.P.No.10869 of 2018

N.Balaji

.. Petitioner

Vs

The State rep. by
Inspector of Police,
All Women Police Station,
Ambur,
Vellore District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records in pursuant to Cr.M.P.No.285 of 2018 in Spl.S.C.No.8 of 2018 on the file of the Sessions Judge Fast Track Mahila Court, Vellore, Vellore District vide order dated 16.07.2018 and set aside the same and permit the petitioner to cross-examine the witness PW1, PW2, PW3 and PW4.

For Petitioner : Mr.M.Sathish Kumar
For Respondent : Mr.C.Raghavan, GA

O R D E R

The petitioner is facing trial in Spl.C.C.No.8 of 2018 before the Mahila Court [Fast Track Sessions Court], Vellore for the offence under POCSO Act. The prosecution examined PW1 to PW4. The accused did not cross-examine the witnesses. The accused filed an application in Crl.M.P.No.221 of 2018 for deferring the cross-examination of PW1 to PW4, on condition that he would cross-examine them only after LW7 is examined. The trial Court dismissed Crl.M.P.No.221 of 2018 on 11.04.2018. One month later, the petitioner filed the present petition in Crl.M.P.No.285 of 2018 under Section 311 Cr.P.C. to recall the four witnesses, which has been dismissed by the trial Court, challenging which, the petitioner is before this Court.

2. Heard Mr. Sathish Kumar, learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3. Mr. Sathish Kumar submitted that the petitioner should be given a fair opportunity to defend himself in a case of this nature and that, the trial Court ought not to have dismissed the petition under Section 311 Cr.P.C.

4. Per contra, the learned Government Advocate refuted the contentions.

5. This Court gave its anxious consideration to the rival submissions. It is seen that on 11.04.2018, PW1 to PW3 were examined. PW1 is the victim girl, who is said to have been sexually abused by the petitioner, when she was hardly 15 years. The petitioner filed Crl.M.P.No.221 of 2018, on the ground that he would cross-examine PW1 to PW3, only if LW7 is examined. Normally, when there are two eye-witnesses to a case, an application for deferring the examination of one eye-witnesses will be entertained by the trial Court. In this case, LW7 was not an eye-witness, because the entire incident has taken place inside the house, where the victim was said to have been ravished by the accused. Therefore, the trial Court was correct in dismissing Crl.M.P.No.221 of 2018 on 11.04.2018 itself.

6. When once the trial Court had dismissed Crl.M.P.No.221 of 2018 on 11.04.2018, a duty is cast upon the accused to cross-examine PW1 to PW3, in view of the law laid down by the Supreme Court in Vinodh Kumar Vs State of Punjab (2015[1] MLJ [Crl] 288). Following the directions issued by the Supreme Court in Vinodh Kumar supra, the Registrar General of the Madras High Court has issued a direction to all the trial Courts in the State to scrupulously follow the law laid down in Vinodh Kumar supra. The petitioner filed the present Crl.M.P.No.285 of 2018 on 11.05.2018, which is one month after PW1 to PW3 were examined. Even in the petition filed by the petitioner, he has not given any adequate reasons, as to why he did not cross-examine PW1 to PW3.

7. In A.G. Vs Shiv Kumar Yadav (2015[9] Scale 649), the Supreme Court has given detailed guidelines as to the circumstances under which, a petition under Section 311 Cr.P.C. can be entertained. In fact, the Supreme Court has stated that even if the accused is in judicial custody, that cannot itself be a reason for recalling the witness under Section 311 Cr.P.C. That apart, under POCSO Act, a victim girl cannot be asked to come to Court again and again, as to how she was ravished. Section 33[5] of the POCSO Act reads as under :

"The Special Court shall ensure that the child is not called repeatedly to testify in the court."

8. In such view of the matter, this Court does not find any infirmity in the order passed by the Court below warranting interference. However, this Court is of the view that interest of justice will be served, if the accused is permitted to cross-examine PW3 and PW4. In the result, this petition is partly allowed. The trial Court is directed to fix a date and recall PW3 and PW4 for the purpose of cross-examination by the accused. On the appearance of PW3 and PW4, the Public Prosecutor in charge of the case and the trial Court shall furnish the deposition in-chief by the witnesses, for them to refresh their memory and only thereafter, they can be subjected to cross-examination. The petitioner shall pay cost of Rs.1,000/- each to PW3 and PW4. Boycott of Court will not be a reason for the petitioner not to cross-examine PW3 and PW4, when they appear for giving evidence. If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand him to custody, in the light of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh JT 2001 [4] SC 319 and proceed with the trial. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Sessions Judge Fast Track Mahila Court,
Vellore,
Vellore District.

2. Inspector of Police,
All Women Police Station,
Ambur,
Vellore District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Sathish Kumar, Advocate, S.R.No.57071

CRL.O.P.No.20300 of 2018

SVN(CO)
GSP(03/09/2018)