

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL.O.P.No.22567 of 2018

1.Rathinam
2.Vimala

.. Petitioners

Vs

The State by
The Inspector of Police
All Women Police Station,
Mettur.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to direct the learned Sessions Judge, Mahila Court, Salem to send the records pertaining to Sessions Case No.39 of 2015 to the concerned jurisdictional Magistrate Court for trial and further proceedings in accordance with law by calling records.

For Petitioner : Mr.M.G.Udayashankar

For Respondent : Mrs.M.Prabhavathi,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to direct the Sessions Judge, Mahila Court, Salem, to send the records pertaining to Sessions Case in S.C.No.39 of 2015 to the concerned jurisdictional Magistrate Court for trial and further proceedings in accordance with law by calling for records.

2. A very interesting issue has been raised in this petition, which requires a detailed consideration by this Court.

3. It is the case of the prosecution that A1 had sexually abused 'X', a minor, on the promise of marrying her, and thereafter, reneged. It is further alleged that A2 and A3, parents of A1, had abused 'X' and had threatened her. On such a complaint, the police have registered a case in Crime No. 8 of 2012 and after completion of the investigation, filed a charge

sheet against A1, A2 and A3 for the offences under Sections 376, 417, 294(b), 506(ii) and 353 IPC before the jurisdictional Magistrate Court. The Magistrate committed the case to the Sessions Court, Salem. The case was made over to the Mahila Court, Salem, where the charges under Sections 376, 417 and 352 IPC were framed against A1 and charges under Sections 294(b) and 506(ii) IPC were framed against A2 and A3.

4. During the course of the trial, A1 filed an application under Section 7 A (1) of the Juvenile Justice (Care and Protection of Children) Amended Act, 2006 (for brevity "the JJ Act"), contending that he was a minor as on the date of the incident, since, he was born on 25.06.1994 and the date of incident being 13.04.2012. The Mahila Court conducted enquiry in terms of Section 7 A (1) of the JJ Act and returned a finding that A1 was a minor as on the date of the occurrence. Therefore, the case of A1 was split up and was sent to the Juvenile Court for trial, and the case proceeded further as against A2 and A3. Under such circumstances, A2 and A3 are before this Court, for a direction to the Mahila Court to send the case to the Magistrate Court for trial.

5. Heard Mr.M.G.Udayashankar, learned counsel for the petitioners/A2 and A3 and the learned Additional Public Prosecutor, appearing for the respondent police.

6. Mr.M.G.Udayashankar raised the following three grounds, and prayed for a direction to send the case to the Magistrate Court for trial.

Ground No.1 : Once the case against A1 is split up, the Mahila Court being a Sessions Court, loses its jurisdiction to proceed with the trial as against A2 and A3, for the offences under Sections 294(b) and 506(ii) IPC, since, those two penal provisions are triable by the Magistrate Court and not by the Sessions Court.

Ground No.2: The evidence adduced by the prosecution so far, as against A2 and A3 qua Sections 294(b) and 506(ii) IPC shows that, those offences were not committed in the course of the same transaction.

Ground No.3 : If the trial proceeds before the Mahila Court, the accused will lose one tier of appeal in the event of they being convicted.

7. Per contra, the learned Additional Public Prosecutor, refuted the contentions.

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

9. At the first blush, the arguments of

Mr.M.G.Udayashankar appeared convincing. However, on a closer scrutiny of the law relating to joint trial, the prayer of Mr.M.G.Udayashankar cannot be conceded. Before adverting to the 1st ground raised by Mr.M.G.Udayashankar, it may be necessary to address the 3rd and 2nd grounds raised by him.

10. As regards the 3rd ground, an appellate remedy is a statutory remedy and one cannot take the plea that the loss of an appellate remedy would per se prejudice the case of the petitioners/accused. This Court cannot decide now, whether A2 and A3 would be convicted at all by the Sessions Court.

11. As regards the 2nd ground raised by Mr.M.G.Udayashankar, it is pertinent to point out that the final report was filed on the premise that the offences under Sections 294(b) and 506(ii) IPC were committed by A2 and A3 in the course of the same transaction relating to offence under Section 376 IPC alleged against their son, A1. On this premise, the case was committed to the Court of Sessions. Even before the Sessions Court, charge Nos.3 and 4 that were framed against A2 and A3 for the offences under Sections 294(b) and 506(ii) IPC, were framed on the premise that those offences were committed by A2 and A3 in the course of the same transaction relating to the offence under Section 376 IPC, that was allegedly committed by A1. The accused did not take any serious exception when the charges were framed. Now, after the evidence has been adduced, this Court, under Section 482 Cr.P.C., cannot step into the shoes of the Mahila Court for appreciating the evidence and hold that the offences under Sections 294(b) and 506(ii) IPC were not committed in the course of the same transaction relating to the offences under Section 376 IPC. This has to be done by the Mahila Court and not by this Court in exercise of its powers under Section 482 Cr.P.C.

12. As regards the 1st ground raised by Mr.M.G.Udayashankar, all the three accused came to be tried together in terms of Section 223(d) Cr.P.C., which reads as under :

"The following persons may be charged and tried together, namely:-

....

(d) persons accused of different offences committed in the course of the same transaction;"

The question is, just because the case of A1 was split up and sent to the Juvenile Court, whether the case of A2 and A3 be sent to the Magistrate Court. Had A1 not been a minor as on the date of the incident, the trial would have proceeded as usual, before the Sessions Court. Hypothetically, had A1 died during trial, would it be open to the Sessions Court to send the case

records back to the Magistrate Court for trial ? The answer to this question is an emphatic 'No'. Therefore, just because the case of A1 was sent to the Juvenile Court, where A2 and A3 cannot be jointly tried, the Mahila Court has no jurisdiction to set at naught, the committal proceedings and the charges framed for sending the case records to the Magistrate Court for trial.

In the result, this petition is closed with a direction to the trial Court to proceed with the trial expeditiously.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
All Women Police Station,
Mettur.
2. The Sessions Judge,
Mahila Court, Salem.
3. The Chief Judicial Magistrate, Salem
4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.22567 of 2018

GMV (29/10/2018)

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