

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15278 of 2018
and Crl.M.P.No.7756 of 2018

R.Ajees ... Petitioner/A1

Vs

Chandra ... Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 20.02.2018 in Crl.M.P.No.3154 of 2017 in Spl.S.C.No.20 of 2015 on the file of the I Additional District and Sessions Judge at Coimbatore.

For Petitioner : Mr.K.Myilsamy

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 20.02.2018 passed in Crl.M.P.No.3154 of 2017 in Spl.S.C.No.20 of 2015 by the learned I Additional District and Sessions Judge, Coimbatore.

2.On the complaint lodged by Chandra, the respondent Police registered a case in crime No.41 of 2013 and after completing the investigation, filed a final report before the learned Judicial Magistrate [Mahila Court], Coimbatore and the case is now pending trial in Spl.S.C. No.20 of 2015 before the Principal District and Sessions Court, Coimbatore. The crux of the allegations in the charge sheet is that, Chandra is a Dalit and a divorcee and has a child through her first marriage; that Ajees [A1] got acquainted with her and came forward to marry her knowing full well about her marital status; that their marriage was solemnised on 10.10.2012; that Chandra conceived and was forced to undergo abortion; that A1 and his family members were reluctant to accept Chandra as part of their family; that they demanded more dowry and attempted to even murder her. Therefore, charges for the offences under Sections 294[b], 323, 506[i], 498[A], 307 and 312 of IPC and Section 4 of the Dowry Prohibition Act and Section 3[1][x] of SC & ST [POA] Act, 1989 were framed against A1 to A5 by the Sessions Court. The accused pleaded not guilty and eight witnesses were examined on behalf of the prosecution including Chandra. Thereafter, a petition in

Crl.M.P.No.3154 of 2017 in Spl.S.C.No.21 of 2015 was filed for marking certain letters, that is said to have been written by A1 in Malayalam to Chandra and some photographs. The accused filed their counter and resisted the petition by contending that the prosecution should not be allowed to fill up the lacuna. However, the trial Court, by order dated 20.02.2018, allowed Crl.M.P.No.3154 of 2017 in Spl.S.C.No.21 of 2015. Aggrieved by which, the accused is before this Court.

3.Mr.K.Myilsamy, learned counsel appearing for the accused submitted that after the entire evidence of the prosecution was over, it is not open to the de facto complainant to file an application under Section 311 of Cr.P.C. He also submitted that the photographs, which they are seeking to mark cannot be admitted in evidence without the author. It is his further submission that Mr.Vasantha Kumar, Advocate was the counsel for Chandra and therefore, undue prejudice will be caused to the prosecution case, if he is examined as a witness for the purpose of translating the contents of Malayalam letter to Tamil.

4.Per contra, learned Government Advocate controverted the said submissions.

5.This Court gave its anxious consideration to the rival submissions. The law relating to recall of a witness has been clearly settled by the Hon'ble Supreme Court beginning with AIR 1968 SC 178 [Jamatraj Kewalji Govani Vs State of Maharashtra] up to 2016[8] SCALE 192 [State of Haryana Vs Ram Mehar and Others]. The spirit of Section 311 of Cr.P.C. is to bring the best evidence on record and the same cannot be shutout on the ground that a lacuna is being filled up. The Hon'ble Supreme Court has discussed the concept of lacuna in detail in Rajendra Prasad Vs Narcotic Cell reported in [1999]6 SCC 110, wherein, the following passage is worth extracting :

"8.Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

6.Therefore, it has to be seen whether the additional evidence which is sought to be adduced is relevant for deciding the fact in issue. In this case, the allegation

against the accused is that A1 promised to marry Chandra and had physical relationship with her and thereafter, treated her badly. It is the defence of the accused that A1 had no relationship with her. In such view of the matter, the alleged letters of A1 in Malayalam assumes significance. If the letters were written to the Police, they may become inadmissible if they are confessional in nature, in view of the bar under Section 25 of the Evidence Act, 1872. If they are admissions simpliciter, still, if they have been written to the Police during the course of investigation, it may be inadmissible as a statement made to a Police officer is hit by Section 162 of Cr.P.C. As regards the photographs, it is always open to the accused to question the veracity and the genuineness of it.

7. Prima facie, these documents appear to be relevant to decide the fact in issue and therefore, they cannot be disallowed at the threshold. There is much force in the submission of Mr. Myilsamy that Mr. Vasantha Kumar, who has acted as Advocate for Chandra should not be examined for the purpose of translating the letters, as that would cause serious prejudice to the case of the accused. After all, the victim and the accused are entitled to a fair trial. Instead of admitting this case and keeping the trial pending, this Court directs that trial Court not to examine Mr. Vasantha Kumar for the purpose of translating the documents and instead, the services of any staff of the Coimbatore Court or any other person, who is acquainted with Malayalam and Tamil can be examined to translate the document. Except this modification relating to examination of Mr. Vasantha Kumar, this Court does not find any other infirmity in the order passed by the trial Court, warranting interference. Hence, this petition is dismissed with liberty to the accused to raise all their available defences against these documents before the trial Court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The I Additional District and Sessions Judge,
Coimbatore.

+1cc to Mr. K. Myilsamy, Advocate Sr.No.36691

sm:19.6.2018

Cr1.O.P.No.15278 of 2018