

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.15646 of 2018

and

Crl.M.P.No.8015 of 2018

Kanakkan

...Petitioner

vs.

State by Inspector of Police

Belukurichi P.S.

Namakkal District.

...Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal, dated 09.05.2018 passed in Crl.MP.No.165 of 2018 in Spl.C.C.No.19/2017 on the file of the Court of Sessions (Fast Track Mahila Judge), Namakkal.

For petitioner : Mr.K.Vellayaraj

For respondent : Mrs.P.Kritika Kamal

Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 09.05.2018 passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal in Crl.MP.No.165 of 2018 in Spl.C.C.No.19/2017.

2. The petitioner is facing a prosecution in Spl.C.C.No.19 of 2017 before the Court of Sessions (Fast Track Mahila) Judge, Namakkal for the offences under Sections 3, 4, 5(m) & 6 of the Protection of Child from Sexual Offences Act, 2012 (for short "the POCSO Act"). The prosecution have so far examined 11 witnesses, whom the petitioner has not cross-examined at all. The petitioner filed Crl.MP.No.165 of 2018 in Spl. C.C.No.19 of 2017 under Section 311 Cr.P.C for recalling PW1 to PW6, which has been dismissed by the trial Court on 09.05.2018, challenging which, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is aged about 71 years and that he is a physically challenged person as well and his counsel did not cross-examine the prosecution witnesses and therefore, one more opportunity should be given to the petitioner to re-call the said witnesses to meet the ends of justice.

5. Per contra, the learned Government Advocate (Crl. Side) refuted the above said contention.

6. On a reading of the petition in Crl.MP.No.165 of 2018, that has been filed by the petitioner under Section 311 Cr.P.C before the trial Court, it is seen that the petitioner has filed it in a very cavalier manner. He has simply stated that since he is a physically disabled old man and that he has no means to engage a counsel to defend his case, the above witnesses should be recalled.

7. Admittedly, the petitioner/accused is not a remand prisoner. He has been released on bail. The trial Court records show that he engaged one Mr.S.Anandbabu and one Mr.A.Nallasivam as his counsel. He then changed his counsel and engaged one Mr.B.Palanisamy. It is common knowledge that in the trial Court, the prosecution witnesses are seldom cross-examined on the day itself, they are examined in chief for oblique reasons, may be in order to win over the witnesses or intimidate the witnesses or tire them out. It has been noticed by the Supreme Court and that is why, in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288], the Supreme Court has held that the prosecution witnesses should be examined on the day itself, they are examined in chief. Following the said Supreme Court Judgment, the Registrar General of this Court has issued a Circular to all the trial Courts to strictly follow the mandates of the Supreme Court in Vinod Kumar (supra). In Rajaram Prasad Yadav Vs. State of Bihar [(2013) 3 Scale 316] and in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319], the Supreme Court has clearly stated that a petition filed under Section 311 Cr.P.C should not be mechanically allowed. That apart, under the POCSO Act, a victim girl cannot be summoned again and again and subjected to humiliation. Therefore, this Court does not find any infirmity in the order passed by the trial Court.

8. On instructions, the learned Government Advocate (Crl. Side) submitted that the petitioner/accused threatened the two witnesses viz., Periyasamy and Selvakumar in open Court.

9. Of course, the learned counsel for the petitioner refuted the said submission.

10. The petitioner filed this petition to recall only PW1 to PW6, whereas PW1 to PW11 have been examined and they have also not been cross-examined. If this Court deals only with PW1 to PW6 in this petition, the petitioner/accused will adopt further dilatory tactics seeking to re-call PW7 to PW11. Therefore, in order to put a quietus to this issue, this Court is of the view that the interests of justice will be served, if out of PW1 to PW11, the following witnesses are recalled on payment of costs Rs.500/- per witness for the purpose of cross examination. The witnesses who shall be re-called are (1) Arumugam, S/o.Nadarajan (PW3), (2) Santhi, W/o.Karuppannan

(PW6) (3) Murugesan, S/o.Palaniyappan (4) P.Parimalam, Head Constable and (5) Rajendran.V, Sub-Inspector of Police. Since the prosecution was not able to furnish to this Court the correct prosecution witness numbers of some of the witnesses, this Court has given only their name for easy identification by the trial Court. On the appearance of the above said witnesses, each should pay costs of Rs.500/-. The Public Prosecutor and the trial Court shall furnish the deposition to the recalled witnesses to get read and refresh their memory before putting them into the witness box for the purpose of cross-examination. On the appearance of the above said witnesses, the petitioner/accused shall cross-examine them. Boycott of Courts cannot be stated as a reason for not cross-examining the recalled witnesses. If the accused does not cross-examine the recalled witnesses, his right will stand forfeited. If the accused adopts any dilatory tactics, he can be remanded to custody in terms of the law laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, a fresh FIR can be registered against him under Section 229-A IPC. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Court of Sessions (Fast Track Mahila) Judge,
Namakkal.
2. The Inspector of Police
Belukurichi P.S.
Namakkal District. सत्यमेव जयते
3. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to M/s.V.K.Raj Law Chambers Advocate SR.No.37808

AK(CO)
sm:29.6.2018

CrI.O.P. No.15646 of 2018