

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.07.2018
CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.OP.No.18731 of 2018

P.Babu

... Petitioner

Vs

State of Tamil Nadu
Represented by
The Inspector of Police
H-6, R.K. Nagar Police Station
Chennai-21.

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed by the learned Sessions Judge, Mahila Court, Chennai, dated 16.07.2018 made in Crl.MP.No.10935 of 2018 in S.C.No.315 of 2015 with regard to recall of PW-3 Gayathri and allow this Criminal Original Petition.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.C.Raghavan

Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 16.07.2018 passed by the Sessions Judge, Mahila Court, Chennai, in Crl.MP.No.10935 of 2018 in S.C.No.315 of 2015.

2. Today, Mr.C.Karthi, Sub-Inspector of Police, H6, R.K.Nagar Police Station, Chennai, is present before this Court.

3. The petitioner is facing a prosecution in S.C.No.315 of 2015 under Section 306 IPC before the Sessions Judge, Mahila Court, Chennai. The prosecution examined PW3, who is a child witness, aged about 11 years and PW4 on 18.12.2017. The accused has cross-examined both the witnesses on the same day. Thereafter, the accused filed Crl.MP.No.10935 of 2018 in S.C.No.315 of 2015 under Section 311 Cr.P.C. to recall PW3 & PW4. The trial Court, by order dated 16.07.2018, has recalled PW4 for cross-examination by the petitioner, but has rejected the plea to recall PW3. Challenging the said order, the accused is before this Court.

4. Heard the learned counsel for the accused and the learned Government Advocate (Crl. Side).

5. The learned counsel for the accused submitted that

several contradictions are there between the chief-examination of PW3 and the statement recorded under Section 161(3) Cr.P.C. and the same have to be put forth to PW3. He further submitted that he would restrict his cross-examination, by merely making suggestions.

6. Per contra, the learned Government Advocate (Crl. Side) refuted the contention.

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

8. It is seen that PW3 was examined on 18.12.2017 and on the same day, she has been cross-examined. Section 161(3) Cr.P.C. statement of PW3 was available with the accused on 18.12.2017. However, the petition under Section 311 Cr.P.C. has been filed only on 09.07.2018. Admittedly, PW3 is a 11 year old girl. Even according to the learned counsel for the accused, PW3 is also not an eye-witness. Under such circumstances, it will be travesty of justice to recall a 11 year old girl again and again to the Court to give evidence. It is a trite law that Section 161(3) Cr.P.C. statement is not a substantive piece of evidence and any improvement in the chief-examination by the witness can always be found out by an experienced trial Judge in the rank of Sessions Judge, as in this case. Hence, this petition is dismissed, as being devoid of merits.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahila Court, Chennai सत्यमेव जयते

2. The Inspector of Police
H-6, R.K. Nagar Police Station
Chennai-21.

3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Karthikeyan, Advocate, S.R.No.50234

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GSP(02/08/2018)