

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2018

CORAM

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

Crl.O.P.No.19181 of 2018

and

Crl.MP.No.10104 of 2018

K.Ganesan

...Petitioner/Accused

vs

State Represented by

Inspector of Police

W-26, All Women Police Station

Ashok Nagar, Chennai.

... Respondent/Complainant

Criminal Original Petition has been filed under Section 482 Cr.P.C to set aside the order dated 02.07.2018 passed by the learned Sessions Judge, Mahila Court in Crl.MP.No.10724 of 2018 in S.C.No.146 of 2015.

For Petitioner : Mr.R.Johnsathyan for
Mr.S.Suresh

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 02.07.2018 passed by the Sessions Judge, Mahila Court in Crl.MP.No.10724 of 2018 in S.C.No.146 of 2015.

2. The petitioner is facing a prosecution under Section 6 of the Protection of Children from Sexual Offences Act, 2012, in S.C.No.146 of 2015 before the Additional Sessions Judge, Mahila Court, Chennai. At the fag end of the trial, the petitioner filed Crl.MP.No.10724 of 2018 in SC.No.146 of 2015 under Section 311 Cr.P.C. to recall the Investigating Officer-PW10, which has been dismissed by the trial Court, by the impugned order dated 02.07.2018, 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-State.

4. On a reading of the impugned order, it is seen that the Investigating Officer-PW10 was not cross-examined on the day when he was examined-in-chief. The reason given by the accused is that he wanted to cross-examine the Doctor-PW6 and thereafter, cross-examine the Investigating Officer-PW10. In fact, the Investigating Officer-PW10 appeared before the trial

Court pursuant to the order passed by the trial Court at the request of the accused. Therefore, the trial Court was right in dismissing the petition filed by the accused.

5. However, the learned counsel for the petitioner/accused submitted that there are contradictions in the statement recorded under Section 161(3) Cr.P.C., which have to be put to the Investigating Officer-PW10 and therefore, he seeks one more opportunity to cross-examine the Investigating Officer-PW10.

6. Accepting his submission, the trial Court is directed to fix a date and recall the Investigating Officer-PW10 for cross-examination. On the appearance of the Investigating Officer-PW10, the accused shall pay a costs of Rs.2,000/- to him. PW10 should be permitted to read his examination-in-chief for refreshing his memory and only thereafter, he can be subjected to cross examine. On the day when the Investigating Officer-PW10 appears, the petitioner shall cross-examine him and boycott of Courts shall not be stated as a reason for not cross-examining the Investigating Officer-PW10. If the accused fails to cross-examine the Investigating Officer-PW10, the Court can remand him to custody for protracting the trial as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. The trial Court is directed to complete the trial within a period of one month from the date of receipt of a copy of this order.

With the above direction, this petition is ordered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Chennai.
2. Inspector of Police
W-26, All Women Police Station
Ashok Nagar, Chennai.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.S.Suresh, Advocate SR.No.52793

Cr1.O.P.No.19181 of 2018

RJI (CO)

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