



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2018

Pronounced on : 12.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.18063 of 2015
and
M.P. (MD) Nos.1 to 3 of 2015 and
Crl.M.P. (MD) No.7288 of 2018

Christuraj

..Petitioner/2nd Respondent
Sole Accused

Vs.

1.State, rep. by
The Sub Inspector of Police,
Eraniel Police Station,
Kanyakumari District
Crime No.838 of 2004

.. 1st Respondent/1st Respondent
Complainant

2.Muthuswamy

.. 2ndRespondent/Petitioner
Defacto Complainant

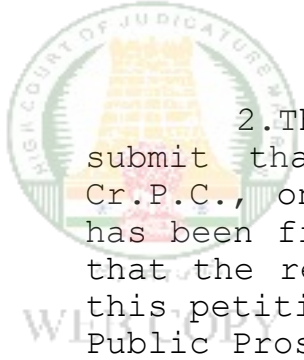
PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in Crl.M.P.No.255 of 2015 in S.C.No.34 of 2008 on the file of the Sessions Judge-Mahalir Fast Track Court, Nagercoil, Kanyakumari District and set aside the order dated 31.07.2015.

For Petitioner : Mr.M.Suri

For Respondents :Mr.A.P.G.Ohm Chairma Prabhu
APP for A1
Mr.K.K.Samy for R2

O R D E R

This petition is filed challenging the order passed in Crl.M.P.No.255 of 2015 in S.C.No.34 of 2008 on the file of the Sessions Judge/Mahalir Fast Track Court, Nagercoil, Kanyakumari District dated 31.07.2015, thereby allowing the petition filed by the defacto complainant under Section 311 of Cr.P.C. to examine his grand daughter as prosecution witness in S.C.No.34 of 2008.



2.The learned counsel appearing for the petitioner would submit that the petition has been filed under Section 311 of Cr.P.C., only to fill up the lacuna in the prosecution case and it has been filed in a later stage of trial. He would further contend that the respondent/defacto complainant has no locus-standi to file this petition, when the case has been conducted by the State through Public Prosecutor. He would also contend that when the said witness was not examined by the first respondent police and not recorded any statement under Section 161(3) of Cr.P.C., she cannot be examined as witness. He would further contend that as per proviso to Section 24 (8) of Cr.P.C., the case is conducted by the State through Public Prosecutor and if at all the defacto complainant wants to assist the case of the prosecution, he can seek permission to appoint advocate to assist the prosecution and through him only, he can file a petition that too through Public Prosecutor. Therefore, he sought for the dismissal of the petition filed by the second respondent under Section 311 of Cr.P.C.

3.The learned counsel appearing for the second respondent/defacto complainant would submit that the second respondent is none other than the own father of the deceased and he is the defacto complainant in this case. The proposed witness to be examined is the eye witness and none other than the daughter of the deceased, who had seen the occurrence, when the accused harassed the deceased to commit suicide. Therefore, the trial Court rightly allowed the petition filed by the second respondent and he sought for dismissal of this petition.

4.The learned Additional Public Prosecutor would submit that the petitioner is the sole accused in this case and he has been charged for the offence under Sections 498(A) and 306 of I.P.C. He would also contend that almost all the witnesses have been examined by the prosecution and at the belated stage, the additional witness cannot be permitted to examine and he supported the case of the petitioner herein.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State/first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

6.The petitioner is an accused, who was charged for the offence under Sections 498(A) and 306 of I.P.C. The defacto complainant is the father of the deceased and father-in-law of the petitioner herein. The deceased and the petitioner herein got married and gave birth to two children. At the time of occurrence, the proposed witness, who is none other than the daughter of the deceased C.Regiba, is aged about 8 years and now she attained majority. Since she is the eye witness to the occurrence, she is the main witness to prove the case of the prosecution. Further, it is also seen that this Court already permitted the eye witness viz., C.Regiba in Crl.O.P.(MD) No.19141 of 2014, who filed a petition to



examine her as witness in this case. This Court, by an order dated 16.10.2014 passed an order permitting the petitioner therein to examine her as witness. The relevant portion of the said order is as follows:

“4.It is the specific case of the petitioner that the minor grand daughter witnessed the torture given by the petitioner's son-in-law on his daughter. Now, the case has been filed under Sections 498-A and 306 I.P.C. Though many witnesses have been examined, the petitioner intends to examine the minor grand daughter, who was an eye witness to the tortures. Even though the petitioner has got every right to assist the prosecution and seek the trial Court to examine the witness and also request the police to examine the minor grand daughter as a witness, taking into consideration the fact that the petitioner has already approached this Court, the trial Court is directed to consider the prayer of the petitioner, if it is made to the same.”

7.The power under Section 311 of Cr.P.C. can be invoked at any point of time before the final judgment is delivered. The only consideration that should weigh in the mind of the Court is whether examination of the witnesses is for the just decision of the case. When allowing the petition under Section 311 of Cr.P.C., the Courts follow that the power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party. Further, the additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

8.In the case on hand, the proposed witness is none other than the own daughter of the deceased and the petitioner/accused herein. She is the eye witness to the occurrence and eye witness to the harassment given by the petitioner and as such, she is very important witness to the prosecution case. Further, the defacto complainant is being the father of the deceased, he can file the petition to examine the eye witness as prosecution witness. It is also relevant to extract Section 311 of Cr.P.C., which reads as follows:

“Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”



9. From the reading of above Section, any Court made at any stage of any enquiry examine any person in attendance though not summoned as witness. Though the proposed witness was not enquired and her statement was not recorded under Section 161(3) of Cr.p.C., she can be examined as a witness. Therefore, there is no infirmity or illegality in the order passed by the trial Court.

10. In view of the above discussion, this criminal original petition is dismissed and the order 31.07.2015 made in CrI.M.P.No.255 of 2015 in S.C.No.34 of 2008 passed by the Sessions Judge-Mahalir Fast Track Court, Nagercoil, Kanyakumari District is confirmed. Considering the year of the case, this Court deem fit to direct the trial Court to complete the entire trial, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Sessions Judge-Mahalir Fast Track Court,
Nagercoil, Kanyakumari District

2. The Sub Inspector of Police,
Eraniel Police Station,
Kanyakumari District

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.Suri, Advocate, SR.No.90311
+1 CC to M/s.K.K.Samy, Advocate, SR.No.90542

Arul

SS/SKN/SAR 3/03.12.2018/4P/6C

Pre-Delivery order made in
CrI.O.P.(MD).No.18063 of 2015
and

M.P.(MD) Nos.1

to 3 of 2015 and

CrI.M.P.(MD) No.7288 of 2018
12.10.2018