

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1309 of 2012
and
Crl.M.P.No.1 of 2012

K.Gajapathy

... Petitioner

Vs.

1. The State Rep.by
The Inspector of Police,
G-1, Maduranthakam Police Station,
Kancheepuram District.

2. Ganesh

... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.94 of 2012 dated 17.08.2012 in S.C.No.180 of 2011 on the file of the learned Mahila Court, Chengalpattu.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mr.T.Shanmugarajeswaran R1
Govt. Advocate (Crl.Side)

Mr.R.Vijayakumar

R2

ORDER

This revision has been filed to set aside the order passed in Crl.M.P.No.94 of 2012, dated 17.08.2012 in S.C.No.180 of 2011 on the file of the learned Mahila Court, Chengalpattu.

2. The first respondent police registered a case against the second respondent and two others for the offence under Sections 506(ii), 306 IPC and Section 4 and 4B of Tamil Nadu Prevention of Harassment of Woman Act (hereinafter referred to as 'TNPHW Act'). After investigation, the first respondent police laid charge sheet before the learned Judicial Magistrate, Madurantagam. Since the offences are triable by the learned Sessions Judge and it relates to woman, the learned Magistrate

committed the case to the Mahila Court, Chengalpet. The learned Sessions Judge, took the case on file in S.C.No.180 of 2011. During the pendency of the case, A2/second respondent herein filed a petition under Section 227 Cr.P.C. to discharge him from the above case. The learned Sessions Judge, after hearing arguments and considering the materials and statements of the prosecution witnesses, allowed the petition and discharged the second respondent/A2.

3. Aggrieved over the said order dated 07.08.2012 in C.M.P.No.94 of 2012 in S.C.No.180 of 2011, the defacto complainant/P.W.2 has filed the present revision before this Court.

4. The learned counsel for the revision petitioner would submit that when the victim was admitted in the hospital at Chengalpet, intimation was sent to the first respondent police station. One of the police officials came to the hospital and in the presence of the duty doctor, the police recorded the statement of the victim, in which she has stated that the victim and one Sivaraman/A1 loved each other for the past one year. Subsequently, A1 called the victim and refused to marry her. Therefore, she committed suicide by setting fire on herself. The other witnesses and the parent of the victim have clearly spoken about involvement of the second respondent/A2. The learned Sessions Judge has failed to consider the scope of Section 227 Cr.P.C. and allowed the petition to discharge the second respondent, which warrants interference.

5. The learned Government Advocate (Crl. side) appearing for the State would submit that the victim and other prosecution witnesses have clearly spoken about the involvement of the A2 and also abutment to commit suicide. The charges levelled against the second respondent are under Section 306 read with 341 IPC, 506(ii) IPC and Section 4 and 4B of Tamil Nadu Prevention of Harassment of Woman Act. Prior to the occurrence, three accused came to the house of the victim and called her to a lonely place and threatened her. A1 refused to marry her. Due to threaten of all the three accused, the victim was driven to commit suicide. Accordingly, the learned Government Advocate would submit that the learned Sessions Judge has erroneously allowed the petition.

6. The learned counsel for the second respondent/A2 would submit that in the statement recorded by the police, she has stated that the accused threatened her. Except that word, no other allegations are made against the second respondent. Even subsequently, in the statement recorded under Section 164

Cr.P.C. the learned Judicial Magistrate, she has not implicated the second respondent. Therefore, the existing materials are not sufficient to make the second respondent herein/A2 to undergo ordeal of trial. The learned Sessions Judge has rightly considered the materials and the report filed by the prosecution, under Section 173 of Cr.P.C. and discharged him. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Apex Court in the matter of Sanju @ Sanjay Singh Sengar Vs. State of M.P. (2002 SCC (Cri) 1141).

7. Heard the learned counsel for the revision petitioner as well as the learned Government Advocate (Crl. side) appearing for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

8. It is well settled proposition of law that at the time of considering the petition for discharge, the Court has to see the report filed by the prosecution under Section 173 Cr.P.C., and not the defence taken by the accused, and documents filed and referred by the accused. On a reading of the entire materials, it is seen that when the victim was admitted in the hospital for treatment, the first respondent police came to the hospital on intimation. The victim herself has given the statement before the police in the presence of the Doctor. The Doctor, who treated the victim, has given the certificate. Further, the other statements recorded by the prosecution from the other prosecution witnesses also alleges the involvement of the second respondent. Therefore, on a reading of the materials and reports submitted by the prosecution under Section 173 Cr.P.C., prima facie case is made out against the second respondent/A2. Whether the materials are sufficient to convict him or not is to be decided only during the trial and not at this stage. Therefore, the defence taken by the second respondent cannot be considered at this stage.

9. Under these circumstances, this Court finds that the learned Sessions Judge has failed to consider the scope of Section 173 of Cr.P.C. to discharge the second respondent, which warrants interference of this Court. This Court feels that there is infirmity and perversity in the order passed by the learned Sessions Judge. Therefore the order passed by the learned Sessions Judge is set aside.

10. In the result, this Criminal Revision is allowed by setting aside the order in Crl.M.P.No.94 of 2012, dated 17.08.2012 in S.C.No.180 of 2011, on the file of the learned Mahila Court, Chengalpattu.

11.Since the offences has taken place on 02.05.2007, the case is pending for more than 10 years. Even before the Sessions Court, the case is pending for more than eight years. The learned Sessions Judge is directed to frame the charges against all the accused and dispose of the case in accordance with law within a period of six months from the date of receipt of a copy of this order.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
G-1, Maduranthakam Police Station,
Kancheepuram District.
2. The Mahila Court, Chengalpattu.
3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K.G. Senthil Kumar, Advocate sr 5792.
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 58199.

CrI.R.C.No.1309 of 2012
and

CrI.M.P.No.1 of 2012

NM(CO)
SP(15/07/2019)

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