

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.226 of 2019
and
Crl.M.P.No.2404 of 2019

K.Gajalakshmi

.. Petitioner

Vs.

The State represented by its

1. The Inspector of Police,
District Crime Branch,
Kancheepuram District.

2. B.Ramados Pillai,

3. R.Muthukumarasamy

.. Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the order dated 18.01.2019 passed by the learned Judicial Magistrate No.2, Chengalpattu, in CMP No.2098 of 2018 in C.C.No.197 of 2011 in Crime No.29/2014 on the file of the first respondent police.

For Petitioner : Ms.K.Gajalakshmi
Petitioner-in-person

For respondents: Mr.R.Ravichandran,
Government Advocate (Crl. Side)
for R1

ORDER

This Criminal Revision has been filed to set aside the order dated 18.01.2019 passed in CMP No.2098 of 2018 in C.C.No.197 of 2011 by the learned Judicial Magistrate No.2, Chengalpattu.

2. Based on the complaint filed by the revision petitioner/defacto complainant, a case was registered by the first respondent in Crime No.29 of 2014 against the respondents 2 and 3 for the offences under Sections 465, 468, 471, 420 r/w

34 and 506(i) IPC. After completing the investigation, charge sheet was filed and the same was taken on file in C.C.No.197 of 2011. After framing the charges, the trial was commenced. On the side of prosecution, PWs-1 to 3 were examined in chief. At that time, the revision petitioner filed a petition under Section 311 Cr.P.C, to receive the documents and also the Additional Statement recorded under Section 161 Cr.P.C. After hearing the said petition, the learned Judicial Magistrate No.2, Chengalpattu dismissed the same. The Revision petitioner/defacto complainant has also filed a petition under Section 301 Cr.P.C., in CMP.No.247 of 2017 seeking to assist the prosecution and the Court below allowed the petition with a direction to the petitioner to assist the prosecution. Hence, she is only entitled to assist the prosecution, but, not to conduct the trial separately and also not to make any representation independently. As against which, the petitioner has preferred the present revision before this Court.

3. The Revision Petitioner appeared in person. She has stated that she was examined as PW-3 in chief examination and when the matter was posted for cross-examination, she filed the petition under Section 311 Cr.P.C, to receive the documents and also the additional statement under Section 161 Cr.P.C. The matter was not considered by the learned Magistrate and the dismissal of the petition warrants interference. It is the case of the petitioner that she made a complaint before the first respondent against the respondents 2 and 3. The case was registered by the first respondent in Crime No.29 of 2014. After investigation, the first respondent laid a charge sheet before the learned Judicial Magistrate No.2, Chengalpet and the same was taken on file in C.C.No.197 of 2011. In the said case, the trial was commenced and PWs-1 to 3 were examined. Meanwhile, the revision petitioner also filed a petition in CrI.O.P.No.7290 of 2017 before this Court seeking to transfer the case from the Magistrate Court to some other Court and the same was disposed of with a direction to dispose of the main case expeditiously. Subsequently, the petitioner wanted to file the additional statement under Section 161 Cr.P.C and to mark some important documents, but the same were rejected by the Court below. It is the warrant case filed on the police report before the Magistrate. The Inspector of Police, District Crime Branch, Kancheepuram is the complainant and the revision petitioner is the defacto complainant. Therefore, when the case is filed on police report, the learned Public Prosecutor has to commence the trial and if the defacto complainant has any grievance, she can assist the prosecution and she cannot conduct parallel trial. In this case, admittedly, the case was registered, charge sheet was filed and the trial also commenced. The revision petitioner has not given the documents and statement before the first respondent at the time of

investigation and also she has not filed any petition for re-investigating the case and even she has not filed any protest petition against the charge sheet filed by the first respondent. She has not filed private complaint against the first respondent that the investigation has not been conducted properly.

4. In the circumstances, to substantiate the case she can approach the learned Assistant Public Prosecutor and she can assist the prosecution, instead of approaching this Court. While allowing the petition in CMP No.247 of 2017, the revision petitioner was permitted to assist the prosecution. Therefore, the defacto complainant cannot file a petition independently and conduct a parallel trial. The case is filed on police report and therefore, the learned Public Prosecutor has to proceed with the trial. If the defacto complainant wants, she can assist the prosecution for effective trial, but cannot conduct separate trial and marking documents separately.

5. The revision petitioner has placed reliance on the judgement of Hon'ble Apex Court in Vijay Kumar Vs. State of U.P. and others [(2011) 11 S.C.R 893], which informs Section 311 Cr.P.C can be invoked at any stage, the Court can recall any witnesses and receive any documents, whereas, in the case on hand, there is no petition under Section 311 Cr.P.C filed by the prosecution. It has been filed by the defacto complainant. The revision petitioner was already permitted to assist the prosecution. She can only place the materials before the learned Assistant Public Prosecutor and the learned Assistant Public Prosecutor can recall any witnesses and produce any documents otherwise Court can also call any witness or summon any documents in the interest of justice in order to find out the truth. Therefore, the authority cited by the petitioner is not applicable to the present case on hand.

6. Considering the nature of the case and also the petition filed by the petitioner, the relief sought for by the petitioner cannot be granted. Therefore, there is no perversity and infirmity in the order passed by the Court below.

7. However, the revision petitioner/defacto complainant wants to file any document and statement, she can produce the same before the learned Assistant Public Prosecutor and the learned Assistant Public Prosecutor shall consider the papers and if the same are necessary to decide the case, he can file a petition before the concerned Magistrate after serving notice to the defence counsel and furnish the copy to the accused. If the learned Public Prosecutor files the petition, based on the documents and statement given by the defacto complainant, the concerned Magistrate shall consider the petition in accordance with law and proceed further. It makes it clear that if the

case is filed on the police report, the defacto complainant is not entitled to conduct trial separately, but she can only assist the prosecution.

8. With the above directions, this Criminal Revision Case shall stand dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registra

kmi

To

1. The Judicial Magistrate No.2,
Chengalpattu.
2. The Inspector of Police,
District Crime Branch,
Kancheepuram District.
3. The Public Prosecutor,
High Court of Madras,
Chennai-104.

+1cc to Ms.K.Gajalakshmi, Advocate, S.R.No.19105

Cr1.R.C.No.226 of 2019

PA (CO)
CS/03/04/2019

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