

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Tenth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice P. VELMURUGAN

CRIMINAL MISCELLANEOUS PETITION No.5118 of 2019

in CRL A.No.730 of 2018

PURUSHOTHAMAN

[PETITIONER / APPELLANT]

vs

THE INSPECTOR OF POLICE

[RESPONDENT]

VIRUDHACHALAM ALL WOMEN POLICE STATION,
VIRUDHACHALAM,
CUDDALORE DISTRICT

Petition praying that in the circumstances stated therein the High Court will be pleased to examine the petitioner/appellant as defense witness u/s 315 Cr.P.C. r/w 391 Cr.P.C in the above Crl.A.No.730 of 2018 on the file of this Honourable Court

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.R.SANKARASUBBU, Advocate for the petitioner, and of MR.R.RAVICHANDRAN Government Advocate on behalf of the Respondent, the court made the following order:-

This Miscellaneous Petition has been filed to examine the petitioner/appellant as defense witness under Section 315 Cr.P.C. read with 391 Cr.P.C. in the above Crl. Appeal No.730 of 2018, on the file of this Hon'ble Court.

2. The respondent police registered a case against the petitioner for offence under Sections 341, 366, 506(ii), 323 IPC and Section 4 of POCSO Act 2012. After registering the case, the respondent police investigated the matter and filed charge sheet before the learned Special Court, Cuddalore. The Special Court, after framing charges, completed the trial and came to the conclusion that the the appellant herein had committed the offences under Sections 341, 366, 506(ii), 323 IPC and Section 4 of POCSO Act 2012 and convicted him and sentenced to undergo fourteen years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo two years simple imprisonment.

3. As against the said judgment dated 02.11.2018, the appellant has filed an appeal before this Court.

4. During the pendency of the appeal, the appellant has filed this miscellaneous petition, invoking Section 391 Cr.P.C. read with 315 Cr.P.C. to examine himself as defence witness. In support of this petition, the petitioner/appellant has filed the petition stating that the petitioner has married the victim girl and lived as husband and wife for nearly one year. To speak about the said fact it is just and necessary to examine the petitioner as defence witness under Section 315 of Cr.P.C. He is now confined in Central Prison, Cuddalore.

5. The learned counsel for the petitioner would submit that the appellant has a right to file the petition under Section 315 Cr.P.C. to examine himself as witness. An appeal being a continuous proceedings, in order to ensure fair trial, an opportunity has to be given to the petitioner to examine himself as witness. He wants to establish the fact that he married the victim girl. This Court has got ample power to order for examination.

6. In support of his contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in **Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others [2001 4 SCC 158]**. The Court has got the power to allow the petitioner to take the additional evidence and also permit the petitioner to examine himself as witness.

7. The learned counsel for the respondent would submit that the accused cannot file a petition under Section 391 Cr.P.C. The Court has to decide the fact that whether he is entitled for invoking Section 315 Cr.P.C., in the interest of justice.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Crl. Side) and perused materials available on record.

9. The case of the prosecution is that the victim girl is below 18 years at the time of occurrence. The accused committed sexual assault on the victim under threat during minority and also she sustained injury. The respondent police arrested the accused and registered the complaint. Now the petitioner has filed this appeal against the judgement dated 02.11.2018 passed by the learned Sessions Judge in Spl.S.C.No.39 of 2018 . It is the case of the revision petitioner that no opportunity was given to him at that time of trial and after 313 proceedings. He wanted to examine himself as defence witness and to file additional documents. The trial Court has not given opportunity to examine himself as witness.

10. On a reading of 313 proceedings, it is seen that the petitioner has not opted before the trial Court to examine himself as witness. As stated by the learned counsel for the respondent, already sufficient opportunity was given by the trial Court. But he has not examined any of the witness including, himself, under Section 315 Cr.P.C. The only point raised by the petitioner in his petition is that since he married the victim girl and lived together, he wanted to examine himself as witness under Section 315 Cr.P.C. read with Section 319 Cr.P.C.

11. On a reading of the evidence of P.W.1, it is seen that he married the victim girl. In order to prove the marriage, he need not examine himself as witness and file additional evidence. The scope of the case is that during the minority of the victim girl, whether he had sexual intercourse with her or not. During trial, he has not filed any petition to examine any witness and not filed any document. Even in this petition also, the petitioner has not produced any documentary evidence to prove that he had married the girl. During the minority of the victim, the petitioner had sexual intercourse with the victim girl. Merely marrying the victim girl will not take away the offence. Therefore, the additional evidence sought for by the petitioner will not be helpful to the appellant and that will not change the result of the case.

12. Considering the facts and circumstances of the case, this Court is not inclined to allow this petition and there is no merit in the petition. Therefore, this miscellaneous petition is dismissed.

13. List the main appeal on 15.04.2019.

-sd/-

10/04/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE
MAHILA COURT, CUDDALORE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON,
CUDDALORE

4 THE INSPECTOR OF POLICE
VIRUDHACHALAM ALL WOMEN POLICE STATION,
VIRUDHACHALAM,
CUDDALORE DISTRICT

+1 C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary
charges SR.NO.7616

Order

in
CRL MP.5118/2019

in
CRL A.730/2018

Date :10/04/2019

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copies of the BAIL/Anti.BAIL Orders in this format

cm 12/04/2019

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