

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2019

DELIVERED ON : 04.07.2019

CORAM:

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

Crl.R.C. No.570 of 2019 & Crl.M.P. No.7850 of 2019

Kaleel Rahman ... Petitioner /Accused

vs.

The State represented by
the Inspector of Police
Yercaud Police Station
Salem District
(Cr. No.14 of 2012)

... Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the records in Crl.M.P. No.1 of 2019 in S.C. No.424 of 2018 on the file of the Court of the Sessions Judge (Mahila Court), Salem and set aside the order dated 05.03.2019 passed therein.

For petitioner Mr. R. Sankarasubbu

For respondent Mrs. P. Kritika Kamal
Govt. Advocate (Crl.Side)

ORDER

This criminal revision has been filed seeking to set aside the order dated 05.03.2019 passed in Crl.M.P. No.1 of 2019 in S.C. No.424 of 2018 on the file of the Court of the Sessions Judge (Mahila Court), Salem.

2 The petitioner is facing prosecution in S.C. No.424 of 2018 before the Sessions Court (Mahila Court), Salem for the offences under Sections 302 and 201 read with Section 302 IPC. It is the case of the prosecution that the deceased Jayakodi was a lady of easy virtues; on 16.12.2011, the petitioner took her in his motorcycle to a forest area for having sex; Jayakodi demanded Rs.1,000/-, which, the petitioner gave and thereafter, had sex with her; when he wanted to have second round, she insisted that he gives Rs.1,000/- more, which resulted in an

altercation, in which, it is alleged that the petitioner murdered Jayakodi and to cover up the murder, burnt her body.

3 The petitioner filed Crl.M.P. No.1 of 2019 in S.C. No.424 of 2018 under Section 227 Cr.P.C. seeking discharge from the prosecution, which has been dismissed by the Trial Court on 05.03.2019, aggrieved by which, the petitioner is before this Court.

4 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

5 The learned counsel for the petitioner submitted that there is absolutely no legally admissible evidence to implicate the petitioner, inasmuch as, initially, a case under Section 174 Cr.P.C. was registered by the police and thereafter, the petitioner has been falsely implicated in the offence. He further contended that the postmortem certificate shows that the injury found on the deceased was not antemortem, but, postmortem; therefore, the cause of death is doubtful and hence, the petitioner deserves to be discharged from the prosecution. He also contended that the Call Detail Records (CDRs) which the prosecution heavily relies upon, do not have the certification under Section 65-B of the Evidence Act and therefore, the same could be rendered inadmissible in evidence in the light of the law laid down by the Supreme Court in Anvar P.V. vs. P.K. Basheer and others¹.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

7 This Court called for the case papers and perused the same carefully. In the statement of one Appusamy, Forest Ranger, he has stated that while he was going around the forest on 11.02.2012, he noticed a half burnt body and reported the matter to the police; from near the body, the police seized a mobile phone and other material objects. The learned counsel for the petitioner contended that the mobile connection does not stand in the name of the deceased and therefore, it cannot be stated that it belongs to her. In the opinion of this Court, it is not necessary that every person who has a mobile phone, will have it in his name. For instance, nowadays, even school or college going children carry mobile phone with them, though not to school or college, but, while going elsewhere. For them to carry mobile phone with them, it is not necessary that the mobile phone connection should be in their name. A mobile phone

¹ (2014) 10 SCC 473

connection can be obtained in the name of either of their parents and given to children. Therefore, the contention of the learned counsel for the petitioner cannot be countenanced. The police have arrested the petitioner and have recovered his mobile phone. The CDRs of the mobile phone of the petitioner and the deceased were collected and it was found that the petitioner was in constant touch with the deceased and at a later point of time, they both were together, as could be seen from the tower location of their mobile phones.

8 As regards the contention of the learned counsel for the petitioner qua certification under Section 65-B of the Evidence Act, the said issue can be decided only during trial and not in a discharge application. The police have recovered a diesel can and a perusal of the statements of Farook (L.W.15) and Manikandan (L.W.16) shows that the petitioner has purchased diesel on 16.12.2017 from them. At this juncture, it is pertinent to refer to the judgment in Onkar Nath Mishra vs.State (NCT of Delhi)², wherein, the Supreme Court has considered exhaustively, the law of discharge of an accused from criminal prosecution and has held that even a strong suspicion is sufficient to frame charge. The relevant passage from the said judgment is as under:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

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(emphasis in original)

In view of the foregoing discussion, this Court finds no merit in this criminal revision and accordingly, this criminal revision is dismissed as being devoid of merits. It is made clear that whatever is stated in this order is only for the

limited purpose of deciding the discharge application and the Trial Court shall proceed with the trial uninfluenced by any of the observations made in this order. Connected CrI.M.P. stands closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police,
Yercaud Police Station,
Salem District.
- 2 The Sessions Judge (Mahila Court),
Salem.
- 3 The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

CrI.R.C. No.570 of 2019

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