

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15506 of 2019

and

Crl.M.P.7672 of 2019

Sindhuja

...Petitioner

-Vs-

1. State rep.by
The Inspector of Police
Hasthampatty Police Station
Salem.

2. K.Mohan Raj

...Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 27.02.2019 passed in CMP No.3798 of 2018 on the file of the Judicial Magistrate No.III, Salem and allow the above criminal original petition.

For Petitioner : Mr.R.Nalliyappan
For 1st Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 302 of Cr.P.C by the petitioner to permit the petitioner to conduct the trial independently.

2. The petitioner is the de-facto complainant and based on the complaint given by the petitioner, an FIR came to be registered in Crime No.246 of 2017. After the completion of the investigation, a final report was laid before the Court below and the same was taken cognizance for the offences under Section 448, 294(b), 352, 506(2ii) of IPC. The petitioner was also examined as PW1.

3. Later, the petitioner has chosen to file an application under Section 302 of Cr.P.C to permit her to conduct the trial. This petition was filed mainly on the ground that the materials available on record clearly makes out a case under Section 4 of

Prohibition of Harassment of Woman Act and the same has not been added as a charge and the trial has not been conducted in an effective manner.

4. The Court below dismissed the petition mainly on the ground that the trial is effectively conducted by the Assistant Public Prosecutor and there is no requirement to parallelly permit the petitioner also to conduct the trial.

5. The learned counsel for the petitioner submitted that the de-facto complainant / victim has been given the right to effectively participate in the criminal proceedings by virtue of Section 302 of Cr.P.C and by the judgments of the Hon'ble Supreme Court. The learned counsel submitted that since the trial was not conducted effectively and the charges were not framed for an offence under Section 4 of Prohibition of Harassment of Woman Act, the petitioner had filed a petition under Section 302 of Cr.P.C to ensure that the trial is conducted effectively.

6. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the prosecutor appearing before the Court below is proceeding further with the trial effectively and the Court below has given a clear finding as to why the petitioner need not be permitted to parallelly conduct the trial. Therefore, the learned counsel submitted that there are no grounds to interfere with the order passed by the Court below.

7. This Court has carefully considered the submissions made on either side and the materials placed on record.

8. The only grievance expressed by the learned counsel for the petitioner is that the materials placed on record makes out an offence under Section 4 of Prohibition of Harassment of Woman Act and there is no charge framed to that effect. If on the materials, the Court finds that a charge has to be framed for an offence under Section 4 of Prohibition of Harassment of Woman Act, the trial Court has very wide powers under Section 216 of CR.P.C to alter / add charges at any point of time before passing of the judgment. Therefore, this grievance will be taken care by the trial Court in the course of the proceedings.

9. The above ground by itself cannot enable the petitioner to conduct the trial independently before the Court below. It is true that the right of the victim has been recognized under Section 302 of Cr.P.C and by virtue of the judgements of the Hon'ble Supreme Court. However, the Court has to strike a balance and ensure that the trial proceedings are not

unnecessarily jeopardized due to a clash between the prosecutor and the counsel for the de-facto complainant. This will adversely affect the very proceedings itself. Therefore, the Court has to necessarily strike a via media and the same has been done in the present case. The Court below was right in finding that there was no requirement for the petitioner to conduct the trial independently when the same is effectively taken care by the Additional Public Prosecutor.

10. In order to ensure that the interest of the petitioner is safeguarded, the petitioner is permitted to file a petition under Section 301 of Cr.P.C seeking for an assistance of the prosecution and the said application shall be allowed by the Court below and the petitioner shall be allowed to assist the prosecution.

11. In the result, this Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C.No.115 of 2017 within a period of four months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.III,
Salem.

2. The Inspector of Police,
Hasthampatty Police Station,
Salem.

3.The Public Prosecutor,
Madras High Court.

+1cc to Mr.R.Nalliyappan, Advocate sr.49528

Cr1.O.P.No.15506 of 2019
and
Cr1.M.P.No.7672 of 2019

nr 24/06/2019