

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.5930 of 2017

and

Crl.M.P.No.4431 of 2017

Somasundaram

...Petitioner

Vs.

The State of Tamil nadu, rep. by
Inspector of Police,
Papparappatti Police Station,
Pennagaram Taluk,
Crime No.121 of 2015

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the Order dated 23.02.2017 in Crl.M.P.No.932 of 2016 in Sc No.104 of 2016 on the file of the learned Fast Track Mahila Court Judge, (Sessions Judge), Dharmapuri, setaside the same.

For Petitioner : M/S.R.Selvakumar
For Respondent : Mr.C.Raghavan
Govt. Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed seeking direction to call for the records pertaining to the Order dated 23.02.2017 in Crl.M.P.No.932 of 2016 in Sc No.104 of 2016 on the file of the learned Fast Track Mahila Court Judge, (Sessions Judge), Dharmapuri, set aside the same.

2.This petition has been filed challenging the order passed by the Court below allowing an application filed by the prosecution under Section 311 of Cr.P.C to reopen the case and to mark a Compact Disc as a document.

3.The petitioner is facing a trial before the Court below for the offence under Sections 417, 376 and 506(i) I.P.C. The case of the prosecution is that the petitioner who is known to the defacto complainant had physical intercourse with her by cheating her that he will marry her and subsequently, refused to

marry the defacto complainant.

4.The prosecution had examined 14 witnesses and all these witnesses were cross examined. The petitioner was already questioned under Section 313 of Cr.P.C and the case was at the stage of final arguments and at that stage, the prosecution filed an application under Section 311 of Cr.P.C to reopen the case for the purpose of marking the compact disk as a document. This petition was allowed by the Court below on the ground it is necessary in order to come to a just decision in the case.

5.The learned counsel for the petitioner submitted that the prosecution had at no point of time developed a case to the effect that the petitioner was in touch with the victim girl and he had abused her over phone. This was never spoken by the victim girl either at the time of recording her statement under Section 161 Cr.P.C or at the time of recording her statement under Section 164 Cr.P.C or at the time when she deposed as a witness before the Court below. Therefore, the learned counsel submitted that the accused persons cannot be taken by surprise by introducing a new document for which the prosecution has not laid any basis. The learned counsel for the petitioner submitted that the Court below did not take into consideration these facts and had allowed the application filed by the prosecution, which has caused great prejudice to the petitioner.

6. The learned Government Advocate appearing on behalf of the prosecution submitted that the petitioner had contact with the victim girl over phone. Therefore, whatever conversation they had, will have a bearing on the case. The compact disk that was sought to be filed in the case as a document, was the recorded conversation between the petitioner and victim girl, wherein the petitioner had abused the victim girl. This fact needs to be proved before the Court below and therefore, the marking of the compact disk is very essential. The learned counsel submitted that the petitioner will have an opportunity to question the admissibility of the compact disk and also cross examine the witness at the time when it is marked and therefore, no prejudice will be caused to the petitioner if the prosecution is permitted to mark the compact disk as a document.

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

8.The specific case of the prosecution is that the petitioner had physical relationship with the victim girl by cheating her that he will marry and ultimately the petitioner refused to marry the victim girl. At no point of time, the victim girl had stated anything about any abuse made to her by the petitioner over phone. The case was at the stage of final

arguments. At that stage the prosecution has come up with the version that a compact disk must be marked as a document on the ground that the telephonic conversation between the petitioner and the victim girl was recorded and the same will establish that the petitioner had abused the victim girl.

9.While, the trial Court considered the petition under Section 311 Cr.P.C., it has very wide discretion and it can always entertain the petition if it feels that the same will help the Court in coming to fair and just decision. However, such application cannot be allowed as a matter of course, where a new case is sought to be developed or it is filed only to fill up lacuna. Courts should not entertain such petition, since it will cause prejudice to the accused persons and the accused persons will be taken by surprise if a new document or new material is placed before the Court without there being any basis or foundation laid by the prosecution by way of materials which are already collected by the prosecution.

11.In the instant case there was no material collected by the prosecution and at no point of time the victim girl had spoken about she being abused by the petitioner over phone. That apart there was absolutely no explanation on the part of the prosecution as to why they waited till the final argument stage, to bring this document.

12. In the considered view of this Court, the order passed by the Court below deserves to be interfered, since it has been passed without taking into consideration the fact that the prosecution is trying to bring in a new case and the same will cause prejudice to the accused persons.

13.In the result, the Order passed by the Court below in Crl.M.P.No.932 of 2016 is hereby set aside and accordingly this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in S.C.No.104 of 2016 within a period of two months from the date of receipt of copy of this order.

14.With the above direction, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police,
Papparappatti Police Station,
Pennagaram Taluk
Dharmapuri District.

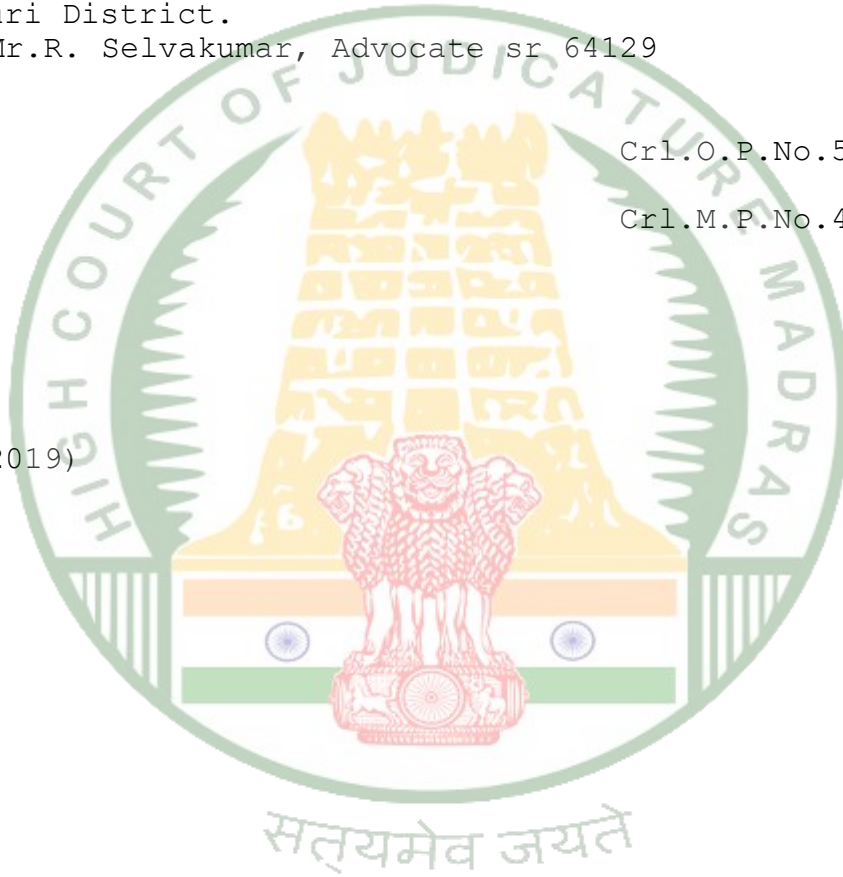
2.The Public Prosecutor
High Court of Madras

3.The Sessions Judge
Fast Track Mahila Court
Dharmapuri District.

+1 CC to Mr.R. Selvakumar, Advocate sr 64129

Crl.O.P.No.5930 of 2017
and
Crl.M.P.No.4431 of 2017

SS (CO)
SP(26/08/2019)



WEB COPY