

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2020

DELIVERED ON : 13.10.2020

CORAM:

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

Crl.O.P. No.5550 of 2020 in Crl.A. SR.No.2504 of 2020

Mohan Sha

Petitioner/Appellant

vs.

1 State represented by the
Inspector of Police
Vishnu Kanchi Police Station
Kancheepuram
(Cr. No.778 of 2010)

2 Balaji Sha

Respondents/Respondents

Criminal Original Petition filed under Section 378 (4) Cr.P.C. seeking to grant special leave to prefer an appeal against the judgment and order dated 29.11.2019 passed in S.C. (K) No.5 of 2012 on the file of the Sessions Court (Mahila Court), Chengalpattu.

For petitioner	Mr. Bhagawat Krishna for Mr. L. Sunil
For R1	Mrs. P. Kritika Kamal Govt. Advocate (Crl. Side)
For R2	No appearance

ORDER

This criminal original petition has been preferred seeking to grant special leave to prefer an appeal against the judgment and order dated 29.11.2019 passed in S.C. (K) No.5 of 2012 on the file of the Sessions Court (Mahila Court), Chengalpattu.

2 The prosecution case is as under:

Mohan Sha (P.W.1/de facto complainant/petitioner herein), his wife Rukmani Bai (P.W.2), his son Ganesha (P.W.3), daughter-in-law Gayathri and her daughter deceased Latha, aged 24 years were residing in Kancheepuram. Balaji Sha (accused herein), who was living in Vellore, is the brother of the said Gayathri. Balaji Sha used to come frequently to meet his sister Gayathri

and in course of time, he fell in love with Latha. There was exchange of love letters between Balaji Sha and Latha. However, Balaji Sha got betrothed to one Swapna on 12.12.2010. Hence, Latha got dejected and committed suicide in her house on 18.12.2020 by consuming insecticide. Alleging that Balaji Sha had abetted the suicide of Latha by giving her a bottle of poison to drink, he was prosecuted in S.C. (K) No.5 of 2012 in the Mahila Court (Sessions Level), Chengalpattu, for the offence under Section 306 IPC and was acquitted vide judgment and order dated 29.11.2019. Now, Mohan Sha has preferred the present criminal original petition invoking Section 378(4) Cr.P.C. seeking grant of special leave to file an appeal challenging the judgment and order of acquittal.

3 Heard the learned counsel for the petitioner, who submitted that the trial Court had failed to appreciate the evidence of Mohan Sha (P.W.1) and Rukmani Bai (P.W.2) that it was Balaji Sha who had given the poison bottle to Latha and had instigated her to commit suicide.

4 It is trite that leave to appeal against acquittal is not automatic and only if it is shown that there is manifest perversity in the findings of the trial Court, can leave be granted. That apart, under Section 384 Cr.P.C., the appellate Court can dismiss the appeal summarily after hearing the appellant or his pleader if there is no sound ground for interfering with the judgment and order of the trial Court.

5 Coming to the case at hand, be it noted that Balaji Sha was not living in Kanchipuram, but, was in Vellore. The entire prosecution case rests on the ipse dixit of Mohan Sha (P.W.1) and Rukmani Bai (P.W.2) that their daughter Latha told them on 19.12.2010 that Balaji Sha handed over a poison bottle to her, which, she consumed. This amounts to dying declaration. The trial Court had disbelieved the dying declaration by giving cogent reasons in paragraphs 5 and 6 of its judgment and order. Even according to the prosecution, Latha consumed poison on 18.12.2010 at 10 p.m. and died only on 20.12.2020 at 7.00 a.m. There is absolutely no material to show that Latha was conscious at that time for her to give dying declaration to her parents on 19.12.2010. Further, the complaint in this case was given only on 20.12.2010 after the death of Latha.

6 In view of the above, this Court is of the view that there is no sufficient ground for interfering with the judgment and order of acquittal passed by the trial Court.

As a sequitur, this criminal original petition fails and is accordingly dismissed and ex consequenti, the criminal appeal is rejected at the SR stage itself under Section 384 Cr.P.C.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

cad

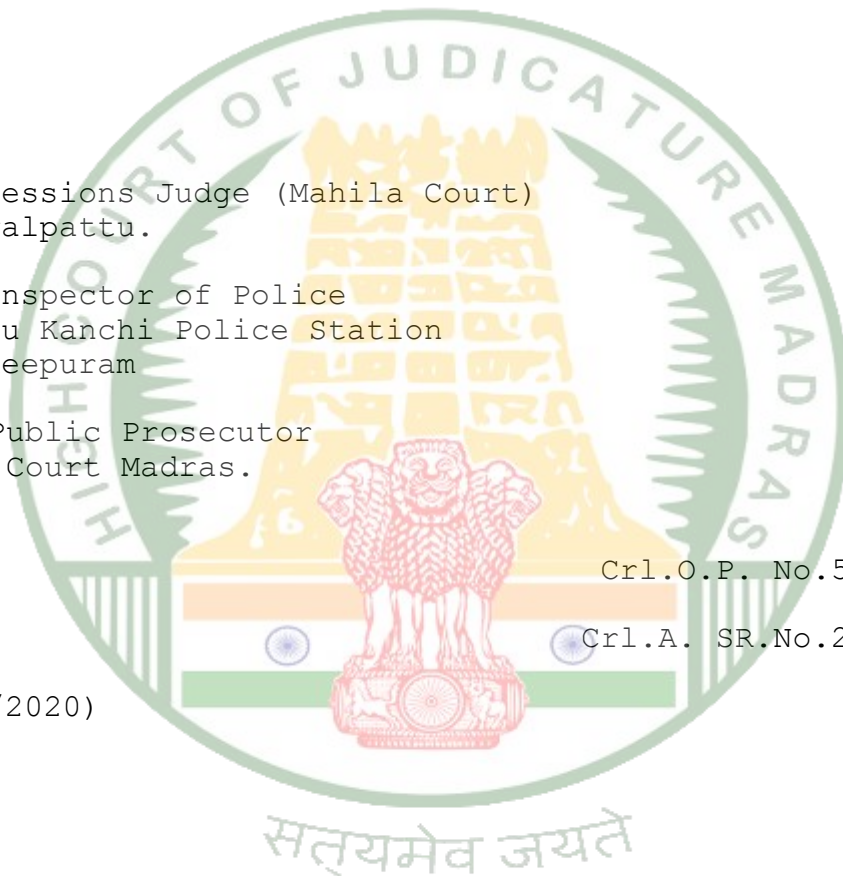
To

1. The Sessions Judge (Mahila Court)
Chengalpattu.
2. The Inspector of Police
Vishnu Kanchi Police Station
Kancheepuram
3. The Public Prosecutor
High Court Madras.

Cr1.O.P. No.5550 of 2020
in

Cr1.A. SR.No.2504 of 2020

SSD (CO)
RMP (11/11/2020)



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