

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2020

CORAM

THE HON'BLE MR. JUSTICE P. RAJAMANICKAM

Crl. A. No. 131 of 2020

N.C. Lakshmi Narasimhan

... Petitioner/Appellant/Accused

-vs-

1. The State rep. by
Inspector of Police,
W-32 All Women Police Station,
Madipakkam,
Chennai - 91.

2. M. Archana

... Respondents

(R2 impleaded vide order dated 04.03.2020
in Crl. M.P. No. 2906 of 2020)

Prayer:- Criminal Appeal filed under Section 14-A(2) of the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989, to set aside the order of the Principal Sessions Judge of Kanchipuram District at Chengalpattu made in Crl. M.P. No. 1072/2020 dated 18.02.2020 and enlarge the Appellant herein on Bail pending investigation in Crime No. 02/2020 on the file of the Inspector of Police, W-32, All Women Police Station, Madipakkam, Chennai - 91.

For Petitioner : Mr. D.N. Dhurgasha

For Respondents: Mr. T. Shunmugarajeswaran,
Government Advocate (Crl. Side) (for R1)
Ms. M. Archana (Appeared in person)

O R D E R

This Criminal Appeal has been filed by the Appellant/Accused under Section 14-A(2) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act for brevity), against the dismissal

of the Bail Application filed by the Appellant/Accused in Crl. M.P. No. 1072 of 2020 on the file of the Principal District and Sessions Judge of Kanchipuram District at Chengalpattu dated 18.02.2020.

2. The case of the prosecution is that on 15.09.2019 at about 9.30 p.m. when the Second Respondent/De-facto Complainant was staying along with her friend, viz., Srisuju, at Door No. 19, Krishnavillasam, Ganesh Nagar, Adambakkam, Chennai - 600 088, the Appellant/Accused went there and abused the Second Respondent/De-facto Complainant by saying her caste name. Further, he made attempt to sexually assault her, and since the said Srisuju warned him, he left the said place. Subsequently, on 19.09.2019 at about 9.30 p.m. when the Second Respondent/De-facto Complainant was in the said house along with her friend Srisuju, again the Appellant/Accused came there and attempted to sexually assault her and also removed his dresses and was dancing with jatty, and the same was video-graphed by the said Srisuju with her cellphone, and hence, the Second Respondent/De-facto Complainant has lodged a complaint before the Police, and based on the same, FIR was registered on 09.01.2020 in Crime No. 2 of 2020 under Sections 354-A, 506(i) of the Indian Penal Code, 1860, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, and Sections 3(1)(s), 3(1)(u) and 3(1)(w)(i) of the SC/ST Act.

3. The Appellant/Accused has filed Crl. O.P. No. 2243 of 2020 before this Court to direct the Principal District and Sessions Judge of Kanchipuram District at Chengalpattu to accept the surrender of the Appellant/Accused in the aforesaid case and consider his Bail Application on the same day. This Court by the order dated 04.02.2020 has directed the Petitioner to surrender before the Trial Court within a period of 2 weeks from the date of receipt of a copy of that order, and on such surrender, the Trial Court shall deal with the matter on the same day on merits and in accordance with law, after issuing notice to the victims under Section 15-A of the SC/ST Act. Accordingly, the Appellant/Accused has surrendered before the Trial Court on 18.02.2020 and also filed Crl. M.P. No. 1072 of 2020 under Section 439 of Cr.P.C. seeking bail. The Trial Court has accepted the surrender of the Appellant/Accused, but dismissed the Bail Application (Crl. M.P. No. 1072 of 2020) by the order dated 18.02.2020 and remanded the Appellant/Accused to the judicial custody, and from that date onwards, the Appellant/Accused is in custody.

4. Aggrieved by the aforesaid order, the Appellant/Accused has filed the present Appeal.

5. This Court has sent a notice to the Second Respondent/De-facto Complainant, and on receipt of the said notice, the Second Respondent/De-facto Complainant has also appeared in person and opposed for granting bail to the Appellant/Accused.

6. The learned Counsel for the Appellant/Accused has submitted that the Appellant/Accused is running a Hotel at E.C.R. Road, Chennai, and the Second Respondent/De-facto Complainant's friend, viz., Srisuju, approached the Appellant/Accused on 28.05.2019 representing that she is working in a Private Company and she will make arrangements for getting loan of Rs.5,00,000/- (Rupees Five Lakh only) for developing the business, from a Private bank within 15 days, and on believing her words, the Appellant/Accused has entrusted 5 blank and signed cheques and 5 blank and signed promissory notes and also paid a sum of Rs.10,000/- (Rupees Ten Thousand only) for commission. He further submitted that after receiving the said documents and also the amount, the said Srisuju has not made any arrangements for getting loan, and hence, the Appellant/Accused has lodged a complaint before the Commissioner of Police on 07.01.2020, and on knowing the said fact, as a counter blast, the said Srisuju instigated the Second Respondent/De-facto Complainant and accordingly, the second respondent/defacto complainant has lodged a false complaint on 09.01.2020 against the Appellant/Accused. He further submitted that the Appellant/Accused has not committed any offence as alleged in the complaint. He further submitted that the Second Respondent/De-facto Complainant has not given any explanation for lodging complaint belatedly on 09.01.2020 for the occurrence said to have been occurred on 19.09.2019. He further submitted that even though the FIR was registered on 09.01.2020, so far the Investigating Officer has not been appointed as contemplated under Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the SC/ST Rules for brevity). He further submitted that the Appellant/Accused has surrendered before the Trial Court on 18.02.2020 and the Trial Court after dismissing the Bail Application filed by the Appellant/Accused, remanded the Appellant/Accused, and subsequently, the remand has been mechanically extended without getting any requisition either from the Inspector of Police or from the Investigating Officer. He further submitted that the Appellant/Accused is a law abiding person, and if he is released on bail, he will abide any condition which is to be imposed by this Court, and therefore, he prays to allow this Appeal and set aside the order passed by the Trial Court in CrI. M.P. No. 1072 of 2020 and release the Appellant/Accused on bail.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the First Respondent has submitted that the Second Respondent/De-facto Complainant has sent her complaint by post to the Commissioner of Police on 15.10.2019 and the same was forwarded to the Additional Deputy Commissioner of Police on 19.10.2019 and the Additional Deputy Commissioner of Police after verifying the said complaint, forwarded the said complaint to the First Respondent. After receipt of the said complaint, a preliminary enquiry was conducted, and thereafter, the FIR was registered on 09.01.2020, and hence, there was a delay in registering the FIR. He further submitted that after registering the FIR, the First Respondent has immediately sent a requisition to the Additional Deputy Commissioner of Police to transfer the said case to the Assistant Commissioner of Police for investigation purpose. Accordingly, the Deputy Commissioner of Police by the letter dated 10.01.2020 requested the Additional Commissioner of Police, Law and Order (South), Chennai to appoint the local Assistant Commissioner of Police to investigate the above case. He further submitted that he was informed by the First Respondent that on yesterday (17.03.2020) that the local Assistant Commissioner of Police was appointed as Investigating Officer and the said Investigating Officer will take up the matter for investigation. He further submitted that the Appellant/Accused has not produced any material to show that the Second Respondent/De-facto Complainant's friend Srisuju has approached the Appellant/Accused and informed him that she will make arrangements for getting loan, and on believing her words, he entrusted blank and signed cheques and promissory notes. He further submitted that along with the complaint, the Second Respondent/De-facto Complainant has produced a Compact Disc (CD) containing the video-graph which was taken through the cellphone when the Appellant/Accused was dancing semi nakedly. He further submitted that the Investigating Officer will have to look into the said CD and proceed further. He further submitted that the Appellant/Accused is highly influential person, and if he is released on bail, he may tamper with the witnesses, and therefore, he strongly opposed to release the Appellant/Accused on bail.

8. The Second Respondent/De-facto Complainant has also opposed for granting bail. She expressed that if the Appellant/Accused is released on bail, there is no safety for her and her family, and therefore, she strongly opposed this Appeal.

9. Admittedly, the FIR was registered on 09.01.2020 and immediately the First Respondent has sent a letter to the Additional Deputy Commissioner of Police requesting him to

transfer the investigation to the Assistant Commissioner of Police as the case is relating to the offences under the SC/ST Act. In pursuance of the said requisition, the Deputy Commissioner of Police by the letter dated 10.01.2020 requested the Additional Commissioner of Police, Law and Order (South), Chennai to appoint the local Assistant Commissioner of Police to investigate the above case, but as per the submission of the learned Government Advocate, only on yesterday (17.09.2020), the local Assistant Commissioner of Police was appointed as Investigating Officer.

10. As per Rule 7 of the SC/ST Rules, an offence committed under the SC/ST Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time. Sub-rule (2) of Rule 7 of the SC/ST Rules says that the Investigating Officer so appointed shall complete the investigation within a period of 60 days. In this case, for appointing Investigating Officer itself, the concerned authorities have taken more than 60 days. Further, even though, the Trial Court has remanded the Appellant/Accused on 18.02.2020 itself, no requisition has been submitted before the Trial Court for seeking extension of the remand, but it appears that the Trial Court has routinely extended the remand.

11. Since the Police Authorities have not shown any interest to appoint the Investigating Officer as mandated under the SC/ST Rules, and also taking into consideration of the fact that the Appellant/Accused is in custody for the past 30 days, this Court is inclined to allow this Appeal. The order passed by the Trial Court in CrI. M.P. No. 1072 of 2020 dated 18.02.2020 is set aside. The Trial Court is directed to release the Appellant/Accused on bail with the following conditions:-

- (i) the Petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand only) with two sureties for a like sum each to the satisfaction of the Trial Court;
- (ii) the Petitioner shall appear before the First Respondent for investigation purpose as and when required by the First Respondent;
- (iii) the Petitioner shall not abscond either during investigation or trial;

(iv) the Petitioner shall not tamper with the witness either during investigation or trial;

(v) on breach of any of the aforesaid conditions, the Trial Court is entitled to take appropriate action against the Petitioner in accordance with law as if the conditions have been imposed and the Petitioner released on bail by the Trial Court itself as laid down by the Hon'ble Supreme Court in P.K. Shaji -vs- State of Kerala [(2005)AIR SCW 5560];

(vi) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A of I.P.C.

(vii) the Petitioner shall stay at Vellore and sign before the Town North Police Station, Vellore daily at 10.00 a.m. in the morning and 5.00 p.m. in the evening without fail until further orders.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

vjt

To

1. The Principal District and Sessions Judge,
Kanchipuram District, Chengalpattu.

2. The Inspector of Police,
W-32, All Women Police Station,
Madipakkam,
Chennai - 600 091.

3. The Inspector of Police,
Town North Police Station,
Vellore.

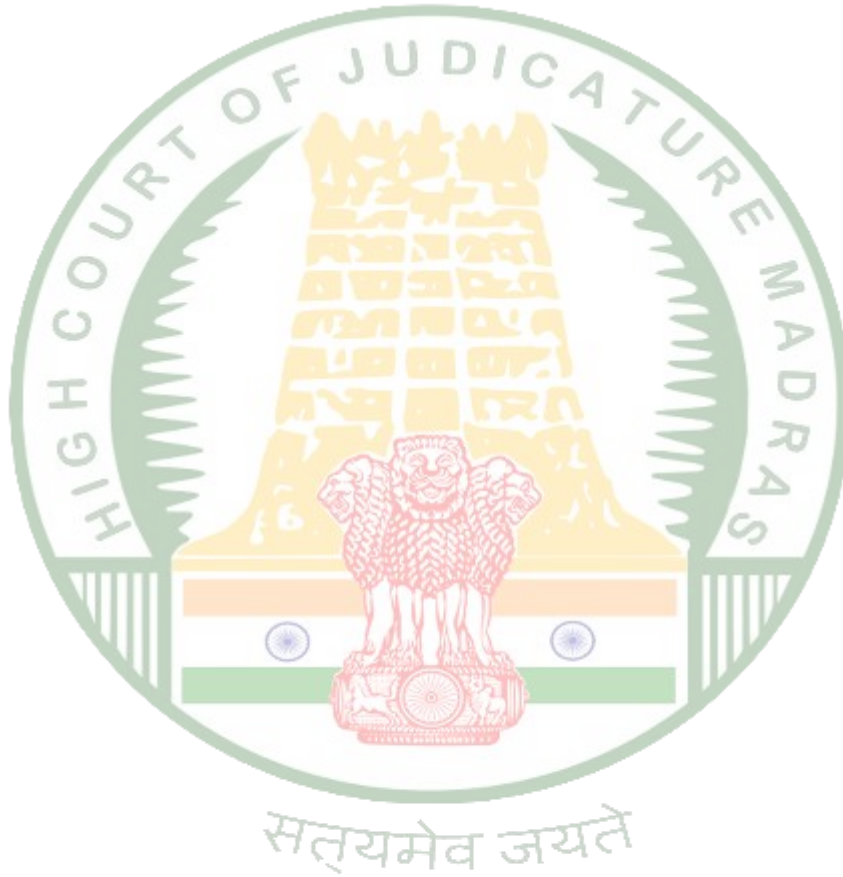
4. The Public Prosecutor,
High Court,
Madras.

5. The Section Officer,
Criminal Section,
High Court,
Madras.

+2CC to Mr.DN.Dhurgasha, Advocate, SR.No.23977.

Cr1. A. No. 131 of 2020

AK(CO)
CSR: 19.03.2020



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