

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.991 of 2020 and
Crl.M.P.No.6885 of 2020

Sathish

...Petitioner

Vs.

State rep by,
Inspector of Police,
Pallipalayam Police Station (Cr.No.274/2016).
Namakkal.

...Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed in Crl.M.P.No.259 of 2020 in Spl.C.C.No.17 of 2017 on the file of the Mahila Judge, Namakkal and to allow this criminal revision.

For Petitioner : Mr.Saravanakumar
For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

The petitioner, who is facing trial in Special C.C.No.17 of 2017, for offence under Section 366 of IPC and Section 5(1) and 6 of the Protection of Children from Sexual Offence Act, 2012, has filed a petition under Section 311 Cr.P.C., before the learned Sessions Judge (Fast Track Mahila), Namakkal in Crl.M.P.No.259 of 2020 in Special C.C.No.17 of 2017, to recall the witnesses PW1 to PW4. The learned Sessions Judge, (Fast Track Mahila), Namakkal, by order, dated 30.06.2020, dismissed the petition, against which the present revision.

2.The learned counsel for the petitioner submitted that in this case, almost all the witnesses were examined and they were also cross examined diligently. As regards PW1 to PW4, they were not cross examined, since the petitioner's erstwhile Advocate had failed to do so. He further submitted that since the petitioner was in confinement, he was not aware of what was happening in the case and his erstwhile Advocate had not properly informed about the progress of the case. He further submitted that PW2 is the victim, PW1 is her mother, who lodged the complaint; PW3 is her younger sister and PW4 is the uncle of

the petitioner. The petitioner and PW2/victim were in love affair with each other. According to the petitioner, PW2 is a major and the love affair between them not approved by the family members of PW2/victim, since they were belong to different community. Since the marriage arrangement of PW2/victim was against her wish, she pressurized the petitioner to save her from it, failing which, she would commit suicide. In order to save her, the petitioner had taken her to several place, which is now projected as a case of kidnapping and penetrative sexual assault, for which he is facing prosecution. Suppressing real facts, a different version is given.

3. PW1 to PW4 were not cross examined till now and the veracity of the witnesses to be decided only by way of cross examination of these witnesses. These witnesses PW1 to PW4 are vital and important witnesses, who speak about the case. If the petitioner is not permitted to cross examine these witnesses, great prejudice would be caused to the petitioner. Hence, he prayed to set aside the order of the trial Court.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that in this case, PW1 to PW17 were examined and PW17 is the Investigating Officer. Except PW1 to PW4, all the other witnesses were cross examined by the defence. The petitioner for the same prayer earlier filed a petition in Crl.M.P.No.792 of 2019, which came to be dismissed on 05.12.2019. In view of the same, the petitioner is not entitled for the same relief. Further, the case is of the year 2017, the petitioner has been dragging on the proceedings for one reason or other. The contention of the petitioner that the family members of the petitioner did not give fee to his Advocate to defend the case, hence, he did not cross examine the witnesses cannot be accepted. The petitioner was initially granted bail and thereafter, he failed to appear before the trial Court, hence, NBW was issued and the petitioner was secured on 17.12.2018 and remanded to judicial custody. The petitioner failed to cooperate with the trial and he has been delaying and protracting the trial. In this case, the victim/PW2 got married with someone and she is settled with her new family. If this Court orders to recall PW2/victim for cross examination, it would amount to disturbing the marriage life of PW2/victim. Hence, he prayed to dismiss the revision by confirming the order of the trial Court.

5. On considering the rival submissions and on perusal of the materials, it is seen that that except PW1 to PW4, all the witnesses were cross examined. In this case, PW1 to PW4 are the vital witnesses. The petitioner was initially granted bail and failed to appear before the trial, hence, he was arrested and remanded to judicial custody on the strength of NBW issued. PW1

to PW4 were not cross examined by his erstwhile Advocate. At that time, the petitioner was in confinement. For the fault of the counsel, the petitioner not to be denied his right of cross examination. Further, the case of the defence to be put forth only through the cross examination of the witnesses. The petitioner is facing prosecution for serious offence

6.As per Section 137 of the Indian Evidence Act, the evidence is complete only on examination of witnesses in chief, cross examination and re-examination. In view of the same, this Court is inclined to set aside the order of the trial Court.

7.The petitioner is permitted to cross examine PW1 to PW4 without seeking any further adjournment. The trial Court is directed to fix a date for cross-examination of PW1 to PW4. On appearance of the witnesses on the day, the petitioner shall cross examine the witnesses viz., PW1 to PW4. In any event, the entire cross examination of PW1 to PW4 to be completed within a period of three weeks.

8.In the result, the order dated 30.06.2020 made in CrI.M.P.No.259 of 2020 in Special C.C.No.17 of 2017, passed by the learned Sessions Judge (Fast Track Mahila), Namakkal, is set aside and the revision is, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Court, (Fast Track Mahila) Judge,
Namakkal.

2.The Inspector of Police,
Pallipalayam Police Station,
Namakkal.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Saravanakumar, Advocate, SR.No.40001

CrI.R.C.No.991 of 2020

SR II (CO)
KKV/16/12/2020