



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.(MD) .No. 3197 of 2020

and Crl.M.P.(MD) No. 1677 of 2020

Munichamy

...Petitioner/A1

Vs.

State rep. by
the Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
(Crime No. 16 of 2016).

...Respondent/Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to ESCHEW/STRIKE DOWN EVIDENCE OF PW.6/LATHA dated 04.02.2020 recorded in S.C.No.56 of 2017 on the file of the learned Sessions Judge/Mahalir Neethimandram (Fast Track Mahila Court) Sivagangai, Sivagangai District and consecutively direct the learned trial Judge to record the evidence as mandated under Section 119 of Indian Evidence Act.

For Petitioner : Mr.A. Thiruvadi Kumar
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor
For Intervener/Victim : Mr.V. Kannan

O R D E R

The Criminal Original Petition has been filed to eschew/strike down the evidence of P.W.6/Latha, dated 04.02.2020 recorded in S.C.No.56 of 2017 by the learned Sessions Judge/Mahalir Neethimandram (Fast Track Mahila Court) Sivagangai, Sivagangai District and also sought for a consequential direction to record the evidence as mandated under Section 119 of Indian Evidence Act.

2. The petitioner is accused No.1 facing trial in S.C.No.56 of 2017 before the learned Sessions Judge/Mahalir Neethimandram (Fast Track Mahila Court) Sivagangai, Sivagangai District for the offence under Section 376 of IPC.

3. The case of the prosecution is that, Six months prior to



20.07.2016 the petitioner herein had committed rape upon P.W.6/Latha/Victim who happened to be a mentally retarded girl and further averment is that the other accused had abused the mother of the victim when they had questioned the same. In this case, prosecution has so far examined seven witnesses out of them P.W.6/Latha/the victim was examined on 04.02.2020. The victim P.W.6/Latha after the alleged occurrence had stayed in the Home which is run by P.W.7/Sarala. During trial P.W.6/Latha has given evidence through sign language which came to be interpreted by P.W.7/Sarala pursuant to which the evidence came to be recorded. It is the grievance of the petitioner that the evidence of P.W.6/Latha which came to be recorded by the trial Court by interpretation of PW7, ignoring the provisions of Section 119 of Indian Evidence Act and the directions issued by this Court, has caused serious prejudice to the defence. Since, PW7/Sarala is neither an interpreter nor a special educator working in the special school for deaf and dumb children and further the recording of such statement had not been videographed, thereby the petitioner has been seriously prejudiced. The present petition has been filed seeking to eschew the evidence of P.W.6/Latha recorded on 04.02.2020 and to record the evidence afresh as per the mandate of Section 119 of Indian Evidence Act and the directions issued by this Court.

4. The learned counsel for the petitioner would submit that the victim/PW6 is a Dumb witness unable to communicate verbally and as per mandate of Section 119 of the Indian Evidence Act, the Court shall take the assistance of an interpreter or a special educator and as per the Circular of the Madras High Court in ROC.No.1729/2010/RR, dated 02.06.2010, the interpreter or special educator has to be selected from the list available with the Court, which has not been followed in this case thereby causing serious prejudice to the defence. In support of his contention, he would rely on the decision of this Court reported in **2014-2-LW(crl.) 417 in Mariyadoss v. State by the Inspector of Police, All Women Police Station, Kumbakonam** and submit that the learned trial judge has not followed the mandate and not ascertained the fact whether the victim is capable of giving evidence by writing. PW7 is not a qualified interpreter or a special instructor in a special school. He would further submit that despite the objections made by the counsel for the petitioner/accused, the learned judge had continue to record the evidence causing prejudice to the petitioner and thereby he would pray to eschew the evidence of the victim/PW6 and the evidence of PW7/Interpreter and to record the evidence afresh as per the mandate of Section 119 of the Indian Evidence Act and in accordance with the circular of this Court dated 02.06.2010.

5. The learned Additional Public Prosecutor appearing for the respondent/police would submit that the evidence of PW6/victim has been completed with the aid of interpreter/PW7. However, he would submit that there is no findings of the learned trial judge that



whether the victim is capable of giving evidence through writing. Further, the mandate of Section 119 of Indian Evidence Act and the directions of this Court have not been followed. He would also submit that PW7 is not a special educator and she is also not in the panel of interpreter available with the Court.

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6. The learned counsel for the intervenor/defato complainant would submit that recording of evidence of the victim has been completed. He would further submit that this Court on earlier occasion in Crl.OP.No.11326 of 2019 dated 23.09.2019 had directed the trial judge to complete the trial in SC.No.56 of 2017 within a period of six months from the date of receipt of the order and that the period is about to get over. He would further submit that if this Court is allowing the petition, a direction may be issued to the learned trial judge to complete the trial within the time frame fixed by this Court.

7. Heard the counsel and perused the materials available on record.

8. It is the case of the petitioner that the evidence of PW6/Latha/victim was recorded with the help of PW7/Sarala who had interpreted her. It is the grievance of the petitioner that the said Sarala is not a Special Educator and that she is not an interpreter empanelled, as per the circular of this Court. Further, grievance is that the learned trial judge had not followed the mandate of Section 119 of the Indian Evidence Act. He had also relied on the judgment of this Court reported in **2014-2-LW(crl.) 417 in Mariyadoss v. State by the Inspector of Police, All Women Police Station, Kumbakonam.**

9. It is apposite to refer to the relevant paragraphs 12 and 13 of the judgment mentioned above :-

12. Section 119 of the Evidence Act as amended by the Parliament with effect from 15.03.2013 reads as under:

"119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence; Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a Special educator in recording the statement, and such statement shall be videographed."

13. The Madras High Court has issued a circular in R.O.C. No. 1729/2010/RR, dated 02.06.2010 to all the Subordinate Courts, containing a list of Advocates who are trained to provide assistance to the Court for



recording the evidence of deaf and dumb witnesses. The list has been prepared for all the Districts in the State and the mobile numbers of the Advocates are also given. This R.O.C was issued pursuant to the direction by this Court on 30.11.2009 in W.P.(MD) No. 5802 of 2006. Apart from the names of the Advocates, the list also contains the address of Special Schools for deaf and dumb in Tamil Nadu from where the Courts can requisition the service of teachers for this purpose. As regards the expenses for videographing the evidence of a dumb witness, it should be defrayed from the contingent fund. The Judicial Officer who is vested with contingent fund in a district, shall make available necessary funds for videographing when a request is made by a Presiding Officer of a Court under his administrative control".

10. As stated above, it is seen that the evidence of the victim/Dumb witness has not been recorded in accordance with the mandate of Section 119 of the Indian Evidence Act and as per the directions in the circular dated 02.06.2010 in ROC.No.1729/2010/RR In view of the same, the evidence of PW6/Latha and PW7/Sarala recorded in SC.No.56 of 2017 on the file of the learned Sessions Judge/Mahalir Neethimandram (Fast Track Court), Sivagangai is eschewed/struck down.

11. The prosecution shall take evidence of the PW6/victim afresh following the mandate of Section 119 of the Indian Evidence Act and as per the direction of this Court in Circular in ROC.No.1729/2010/RR, dated 02.06.2010. The interpreter shall be selected and fixed by the trial Court from the panel as per the Circular of this Court in ROC.No.1729/2010/RR, dated 02.06.2010 within one week from the date of receipt of a copy of this Order and the evidence of the victim with the aid of the interpreter shall be recorded within a period of two weeks thereof. The petitioner/accused shall cross examine the witness and the interpreter on the same day of their recording of evidence in chief.

12. It is also brought to the knowledge of this Court by the learned Additional Public Prosecutor that as on date the Special Public Prosecutor has not been appointed to the concerned trial Court. The District Collector, Sivagangai District is directed to take steps to direct the Director of Prosecution to appoint a prosecutor or direct the Jurisdictional Assistant Director of Prosecution to conduct the prosecution of this case without any further delay. Further, it is made clear the learned judge shall take into consideration the earlier order passed by this Court in Crl.OP.No.11326 of 2019 dated 23.09.2019 and to complete the trial on day to day basis.



13. With the above directions, the Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Sessions Court/Mahalir Neethimandram,
Fast Track Mahila Court, Sivagangai,
Sivagangai District.
2. The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
3. The District Collector,
Sivagangai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-8707[F] dated
27/02/2020)

Crl.O.P. (MD) .No.3197 of 2020
26.02.2020.

KK(06.07.2020) 5P 6C