



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.(MD) No.5028 of 2019
and
Crl.M.P(MD) No.3159 of 2019

Latha

... Petitioner / PW 1

Vs.

The Inspector of Police
Kattuputtur Police Station
Tiruchirapalli District.
(In Crime No.69/2018)

...Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to withdraw and transfer the case in Spl.S.C.No.2 of 2019 on the file of the learned Additional Sessions Judge, Mahila Court, Trichy to Additional Sessions Judge, Mahila Court, Karur.

For Petitioner : Mr.S.Balaji

For Respondent : Mr.S.Bharathi
Government Advocate(Crl.Side)

ORDER

This petition has been filed to withdraw and transfer the case in Spl.S.C.No.2 of 2019 on the file of the learned Additional Sessions Judge, Mahila Court, Trichy to Additional Sessions Judge, Mahila Court, Karur.

2. The petitioner is the mother of the victim by name Sivaranjani. On the complaint given by the petitioner a case in crime No.69 of 2018 was registered by the respondent police under the caption 'Girl Missing'. The respondent police after completing investigation filed final report against Gopalakrishnan and five others for the offences under Sections 366(A) of IPC and Section 5(1), 6, 16 and 17 of POSCO Act. During the course of investigation the respondent have recorded statement under Section 164 Cr.P.C from the victim. After filing of the final report the case was committed to the Additional Sessions Judge, Mahila Court, Tiruchirapalli and taken up for trial in Spl.S.C.No.2 of 2019. On 01.03.2019 the



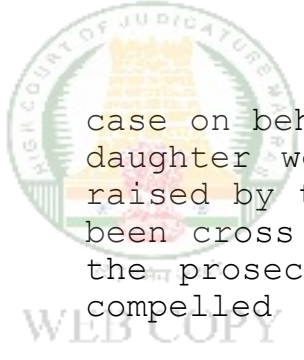
petitioner and her daughter were summoned for giving evidence. The petitioner was examined as PW.1 and her daughter was examined as PW.2.

3. The further case of the petitioner is that on the date of recording evidence of the victim the Special Public Prosecutor did not attend the Court and that the petitioner and her husband were not allowed to be present along with the victim girl while giving evidence. Thereafter the petitioner has also filed petition under Section 40 of the Protection of the Children from Sexual Offences Act to get assistance of the legal practitioner and the petitioner has also sent a complaint to the Registrar Judicial by post on 18.03.2019 seeking for transfer the case from the Additional Sessions Judge, Mahila Court, Tiruchirapalli to some other Court. Being aggrieved the present petition has been filed to transfer the case to the Additional Sessions Judge, Mahila Court, Karur

4. The learned counsel would submit that Special Public Prosecutor was not available on 01.03.2019 when the witnesses were examined and that the petitioner and her husband were not allowed to be present with their daughter while recording evidence. It is a mandate as that as per Section 33(4) of the Protection of the Children from Sexual Offences Act, the Special Court shall create a child friendly atmosphere by allowing a family member, a guardian, a friend or a relative in whom the child has trust or confidence to be present in the Court and the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. Since the case has not been transferred, this petition has been filed to transfer the case.

5. The learned Government Advocate(Crl.Side) would submit that the Additional Public Prosecutor who is attached to the II Additional District and Sessions Court, Tiruchirapalli was appointed to hold additional charge of the Additional Sessions Judge, Mahila Court, Tiruchirapalli as per the proceedings of the District Collector, Tiruchirapalli dated 16.11.2018 in Na.Ka.No.D4/12513/2018 and pursuant to the same the case was prosecuted by Thiru. R.Vengatesan who has taken evidence on the particular day. She would also submit that no objection has been raised by the petitioner either at the time of recording evidence in chief or during cross examination. She would also submit that the petitioner has not made any request under Section 40 of the Protection of the Children from Sexual Offences Act to get assistance of the legal practitioner. The trial had been conducted in a effective manner by the respondent police.

6. This Court based on the averments made by the learned counsel for the petitioner had call for report from the Sessions Judge, Mahila Court, Tiruchirappalli by order dated 07.02.2020. This Court has received a report from the trial Judge. In the report it has been stated that on the date of examination of the witnesses Thiru. R.Vengatesan, Additional Public Prosecutor has prosecuted the



case on behalf of the State. It is seen that the petitioner and her daughter were examined on the same day and no objection had been raised by the petitioner. Further the victim/PW 2 aged 18 years had been cross examined on the same day and she has also not supported the prosecution and infact she had deposed that her parents had compelled her to give the statement to fix A1 in this case.

7. This Court is of the opinion that the present petition has been filed to harass the accused.

8. Recording the same, this Criminal Original Petition is closed. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Additional Sessions Judge, Mahila Court, Trichy.

2.The Additional Sessions Judge, Mahila Court, Karur.

3.The Inspector of Police, Kattuputtur Police Station,
Tiruchirapalli District.

4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.BALAJI, Advocate (SR-3550[F] dated 29/01/2020)

Cr1.O.P.(MD) No.5028 of 2019
and
Cr1.M.P(MD) No.3159 of 2019
28.01.2020

aav

SDS (18.02.2020) 3P-6C