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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
PRONOUNCED ON : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.22908 OF 2021 AND
CRL.M.P.NO.12509 OF 2021

G.Arun @ Arunkumar

... Petitioner

Vs.

State rep by,
The Inspector of Police,
CBCID Namakkal,
Pallipalayam P.S.,
Cr.No.310/2010

... Respondent

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside order passed in Crl.M.P.No.1776/2021 dated 11.11.2021 in S.C.No.69/2012 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to set aside the order, dated 11.11.2021, made in Cr.M.P.No.1776 of 2021 in S.C.No.69 of 2012 passed by the learned Sessions Judge (Fast Track Mahila Court), Namakkal.

2.The brief facts of the case is that A1-Siva @ Sivakumar was running a Finance Company at Pallipalayam, Namakkal District in the name of M/s.Annamalar Finance and he used to lend money and collect the same with exorbitant interest. For the purpose of collection, he used to adopt all sorts of illegal acts like molestation etc. A2 and A3 are friends of A1, A4 and A6 are A1



sisters' husband, A5 is the son of A4. During the month of April 2009, Akila @ Nadheera borrowed a sum of Rs.1,000/- from A1 and promised to return the amount with interest within a period of two weeks. The said Akila @ Nadheera was interested to get into cine field. Taking advantage of the same, on 17.04.2009, A7 took her to the building of A1 at Agraharam, Pallipalayam on the pretext that a Cinema Director has come to Erode for interview. Thereafter, she was raped by A1 and A7, which was videographed by A1 in his mobile phone and circulated the same in social media. The victim/Akila @ Nadheera's mother was informed about this incident and since Akila @ Nadheera's family was voiceless, they were unable to show protest against A1, who was with men and muscle power. In this case, the deceased Velu @ Velusamy, who was the Branch Secretary of CIP(M) at Pallipalayam Agraharam, took steps to secure the victim and her family from the accused. The obscene video clipping involving Akila @ Nadheera and A7 were brought to his knowledge and hence, the deceased made attempts to stop further circulation of the video clippings in the internet by approaching Police and other authorities. The exploitation of loanees by the accused, particularly Akila @ Nadheera by A1 appeared in various magazines in the area. A1 doubted Velu @ Velusamy being the person, who gave information to the magazines. On 10.03.2010, at about 10.45 p.m., in front of Sengunthar Om Kaliyamman Temple, Raja Veethi in Pallipalayam Town, the accused formed themselves into unlawful assembly with an common object to cause death of Velu @ Velusamy and attacked him metal dagger and deadly weapons and committed the murder, which was witnessed by Jambu @ Shanmughasundaram, Ravi, Sridhar and others.

3. On 10.03.2010, the Station House Officer attached to the respondent Police registered a case in Crime No.310 of 2010 (Ex.P27) against the seven accused, for offence under Sections 120(b), 341, 148, 302 r/w 149 and 302 r/w 120(b) IPC, on the complaint given by Jambu @ Shanmughasundaram for murder of Velu @ Velusamy and informed the happenings to PW29 Mr.Senthil Kumar, Circle Inspector, Pallipalayam. PW29 took up the investigation, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, conducted inquest on the body of the deceased. Since the deceased is a political activist, the situation was explosive. To avoid law and order problem, immediately after inquest, the body was sent to nearby Government Hospital, Erode through private ambulance and not to Government Hospital, Namakkal. The body was accompanied by Mr.Veerassamy, Head Constable along with requisition for post-mortem (Ex.P18). During trial, the witnesses were examined on the side of the prosecution and the accused cross examined them and he was questioned under Section 313 Cr.P.C. Thereafter, the accused had examined the defence witness and marked certain documents



and now, the case is at the stage of arguments. At this stage, the petitioner has filed a petition before the trial Court under Section 311 Cr.P.C., to recall the Investigating Officer/PW29 for further cross examination. The trial Court, by order, dated 11.11.2021, dismissed the same, against which the present petition.

4.The learned counsel for the petitioner submitted that in this case, Mr.Senthil Kumar, Circle Inspector attached to the respondent Police was the Investigating Officer and he was examined as PW29 during trial. In his chief examination, he stated that the scene of occurrence was photographed by Matheswaran (DW1), but the prosecution neither examined him as witness, nor marked the photographs and the same was withheld. Later, during his cross examination, PW29 denied the same. The grievance of the petitioner is that the time and place of occurrence were changed to suit the prosecution case. In order to prove the same, he filed a petition under Section 311 Cr.P.C., to recall and further cross examine PW29, which was not considered by the trial Court. Hence, he prayed for setting aside the order of the trial Court.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution has not cited the said Matheswaran, Photographer as witness and no statement under Section 161 Cr.P.C., was recorded during investigation. While being so, there is no necessity to recall and cross examine the Investigating Officer/PW29. In this case, the occurrence had taken place in the year 2010 and charge sheet filed in the year 2012 and thereafter, the case has been successfully kept pending for nearly 11 years. The order of the trial Court, dated 11.11.2021 is a well reasoned one and the evidence of the Investigation Officer/PW29 and DW1-Matheswaran were elaborately discussed. Hence, he prayed for dismissal of this petition.

6.This Court considered the rival submissions and perused the materials available on record.

7.It is seen that one T.V.Matheswaran, Photographer was examined as DW1 on the side of the defence. DW1 in his evidence has stated that he employed as reporter in Tamil daily 'Dina Thanthi' and he used to take photographs of crime scene in and around Pallipalayam Village and the Police personnels attached to the respondent Police Station used to call him to take photographs of the crime scene. He further stated that on 10.03.2010, at about 09.45 p.m., he received a phone call from Veerasamy, Head Constable, within 10 minutes, he reached the scene of occurrence, found a dead body with bleeding injuries and he took four photographs in his camera. Usually, the date and time would be automatically recorded in the photographs. He



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further stated that he saw 7 to 8 persons in the scene of occurrence and he is very categorical that he did not see PW1/Jambu @ Shanmughasundaram, Sridhar and Ravi. On next day, he handed over the photographs taken by him to Veerasamy, Head Constable with memory card. Thereafter, he was not called for enquiry by the CB-CID Police. He specifically stated that while capturing the crime scene, the Head Constable Veerasamy alone was present. He admitted that the name of the camera used for taking photographs is not known to him and the facilities available in the camera could not be elaborated. He stated that he handed over the photographs taken by him in the scene of occurrence to the Police, but he did not receive any acknowledgement or money for the same, which causes serious doubt. DW1 himself admitted that the respondent Police used to call him to take photographs of scene of occurrence in and around Pallipalayam Village. While being so, now he claiming that he has not received any acknowledgement or money from the respondent Police for taking photographs cast doubt. Further, he confirmed publishing the news of the murder of deceased in Daily Thanthi article on 12.03.2010 and the same was marked as Ex.P45. He admitted that he is the person, who had given the article for publication, wherein the name of the eye witnesses and scene of occurrence is elaborated. DW1 gave explanation that what is stated in the FIR, is reproduced in the newspaper. A press reporter is duty bound to give his independent assessment about the scene of occurrence. More so, he claims that he visited the scene of occurrence, took photographs at the instance of Mr.Veerasamy, Head Constable.

8.Now, Mr.Veerasamy, Head Constable is no more. Taking advantage of the same, the petitioner using the the said Veerasamy's name, is trying to protract the trial by filing the petition before the trial Court. In any event, it is for the prosecution to produce the documents collected during investigation. In the event of accused having any documents as a counter point, the same can be produced during trial and adverse inference can be drawn. The Investigating Officer/PW29 did not speak anything about handing over of any photographs by DW1. PW29 in his evidence makes a passing reference about Mathewaran (DW1) and nothing more. When the prosecution did not rely upon the evidence of DW1 and did not produce any materials collected during investigation, the accused can take advantage of the same during trial. Merely referring to omissions and contradictions, the petitioner ought not to have filed a petition under Section 311 Cr.P.C., before the trial Court.

9.In view of the same, this Court does not find any merit in this Criminal Original Petition and the order, dated 11.11.2021, made in Cr.M.P.No.1776 of 2021 in S.C.No.69 of 2012 is



confirmed. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Court of Sessions (Fast Track Mahila) Judge,
Namakkal.
2. The Inspector of Police,
CBCID Namakkal,
Pallipalayam.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sheik Ismail, Advocate, S.R.No.2165

Cr1.O.P.No.22908 of 2021

SMI (CO)
PM/25/01/2022