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W.P.(MD) No.25208 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD) No.25208 of 2022

S.Venkatesh

.. Petitioner-in
Person

Vs

1.Union of India,
rep. by the Secretary,
Ministry of Law and Justice,
Central Secretariat, Shastri Bhawan,
New Delhi-110 001.

2.The Secretary to Government,
Law Department – Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration to declare Sections 235(2) and 248(2) of the Code of Criminal Procedure, 1973 as defective and unconstitutional being violative of Articles 14 and 21 of the Constitution of India and further contrary to the principles of natural



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justice and Article 14 of the International Covenant on Civil and Political Rights.

For the Petitioner : Mr.S.Venkatesh
Petitioner-in-person

For the Respondent : Mr.R.Shunmugasundaram
Advocate-General
assisted by
Mr.P.Muthukumar
State Government Pleader
for respondent No.2

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

The petitioner, appearing in person, has filed this writ petition seeking issuance of a writ of declaration to declare Sections 235(2) and 248(2) of the Code of Criminal Procedure, 1973 [for brevity, "*the CrPC*"] as defective and unconstitutional being violative of Articles 14 and 21 of the Constitution of India and further contrary to the principles of natural justice and Article 14 of the International Covenant on Civil and Political Rights.

2. The petitioner claims to be a final year student pursuing L.L.B. course at the Government Law College, Madurai. The petitioner's



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formal training and expertise are in the field of experimental science. He also holds a Degree in Bachelor of Science (Special) and Masters in Science from the American College, Madurai, along with a degree in Master of Science from Clarkson University, Potsdam, New York, USA. The petitioner had subsequently completed Ph.D from Wayne State University, Detroit, Michigan, USA. It is stated that during the course of his career, the petitioner undertook research on a wide spectrum of systems from solid state Physics, fiber optics, virus crystallography, cancer cells to nanotechnology, and his articles were published in reputed journals.

3. It is stated by the petitioner that, while pursuing his law degree, he read the Forty-Eighth Report of the Law Commission of India of July, 1972, which contains a recommendation to the effect that both parties should be heard as to the appropriate sentence to be passed and should be given an opportunity to lead evidence on the subject.

4. The petitioner stated that Sections 235(2) and 248(2) of the CrPC, which pertain to judgment of acquittal or conviction in the trial



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before a Court of Sessions and acquittal or conviction in the trial of warrant cases by Magistrate, confer a statutory right to be heard only to the accused as to the appropriate sentence to be passed and not to the victim and, therefore, the aforesaid provisions are violative of the fundamental right guaranteed under Article 14 of the Constitution of India. He further submitted that denying the victim a right to be heard during pre-sentence hearing is against Article 21 of the Constitution of India.

5. Concluding his arguments, the petitioner submitted that when the court comes to a conclusion after the completion of the chief-examination, cross-examination and re-examination of both sides that the accused is guilty of the charges levelled against him, the law of the land commands the court to question the accused as a matter of right with regard to the quantum of sentence before the same is imposed, while no such pre-sentencing right is conferred on the victim who suffered the trauma. This, according to the petitioner, is against the recommendation made in the Forty-Eighth Report of the Law Commission of India, inasmuch as no prejudice would be caused to anyone if the court while hearing the accused on the quantum of



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sentence, hears the prosecution/victim as well.

6. Refuting the aforesaid submissions, Mr.R.Shunmugasundaram, learned Advocate General appearing on behalf of the second respondent, urged this court to dismiss the writ petition even without notice to the first respondent on three justifications.

7. Firstly, learned Advocate General submitted that seeking implementation of a recommendation contained in the Forty-Eighth Report of the Law Commission of India of the year 1972, the petitioner has approached this court after 50 years, which is wholly untenable and unacceptable. The writ petition, thus, suffers from laches.

8. Secondly, learned Advocate General submitted that when the court concerned hears both parties and forms its opinion only on the basis of oral and documentary evidence placed before it and finally comes to the conclusion, nobody can say that the court has not heard the prosecution side. Therefore, when the court hears both the parties from day one till it pronounces its judgment convicting the accused,



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hearing the accused on the quantum of sentence has been made as a statutory right to find out any mitigating circumstances from the accused. If the argument of the petitioner is accepted, the case will never come to a logical end for the reason that once again the prosecution and the victim will be repeating their arguments.

9. Thirdly, learned Advocate General argued that when the issue has been decided by various judgments of the Apex Court, no purpose would be served by entertaining this writ petition.

10. We find justification and merits in the arguments of learned Advocate General.

11. Coming to Section 234 of the CrPC, this Section says that when the examination of the witnesses for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply. The provision makes it ample clear that the court comes to the final conclusion after hearing both parties to the case.



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12. Yet another safeguard given to the victim or the prosecution can also be seen from Section 302 of the CrPC, which is extracted hereunder:

"302. Permission to conduct prosecution.—

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

13. A perusal of Section 302 of the CrPC also answers the grievance of the petitioner that any Magistrate inquiring into any case may permit the prosecution to be conducted by any person, other than a police officer below the rank of Inspector. Therefore, the right of



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hearing of the prosecution and victim are protected.

14. In such view of the matter, we do not find any merit in the plea of the petitioner that the victim is not given an opportunity of hearing at the pre-sentencing stage.

For the foregoing reasons, the writ petition is dismissed. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)
11.11.2022

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To

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