



Crl.O.P.(MD)No.15517 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15517 of 2024

Durga Devi

... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Madurai, Madurai District.

2.The Inspector of Police,
Koodal Pudur Police Station,
Madurai, Madurai District.

3.Venkatasubramanian

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to direct the Sessions Mahila Court, Madurai to expeditiously completes the trial proceedings in S.C.No.142 of 2018 in accordance with law within the time stipulated by this Court.

For Petitioner : No Appearance

For R1 & R2 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.



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ORDER

The Criminal Original Petition has been filed seeking orders to direct the Sessions Mahila Court, Madurai to expeditiously complete the trial proceedings in S.C.No.142 of 2018 in accordance with law within a time frame.

2. When the matter is taken up for hearing, there is no representation for the petitioner. It is seen from the records that only on the basis of the complaint lodged by the petitioner's father, FIR in Crime No.690 of 2011 came to be registered and after completion of investigation, charge sheet came to be filed and the case was taken on file in S.C.No.142 of 2018 for the offence under Sections 366(A), 376, 417, 315 and 506(1) IPC and the same is pending on the file of the Sessions Mahila Court, Madurai.

3. When the matter was taken up for hearing earlier, the learned Additional Public Prosecutor appearing for the official respondents would submit that the trial has already been commenced and the petitioner/victim was examined in chief and she reiterated the case of the



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prosecution, but subsequently, when she was cross-examined, she had turned hostile. Considering the said submission, this Court directed the learned Additional Public Prosecutor to produce the copy of the deposition of P.W.1 and the same is produced today.

4. It is evident from the records that the petitioner was examined in chief on 28.07.2022 and she reiterated her complaint version. It is further seen from the records that when she was cross-examined on 09.02.2024, she had not supported the case of the prosecution and hence, at the request of the learned Additional Public Prosecutor she was declared hostile. Moreover, it is evident from the deposition that the Public Prosecutor, in charge of the case, after treating the petitioner as hostile, has not done the cross-examination required under the law but he has only put a formal question that she had changed her earlier version, in order to save the accused.

5. It is pertinent to note that the petitioner has deposed elaborately in chief examination and she was subjected to lengthy cross-examination by the defence, but for the reasons best known to her, she had supported the defence version.



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6. A Three Judges Bench of the Hon'ble Supreme Court in the case of *Anees Vs. The State Govt. of NCT* reported in **(2024) 6 SCR 164**, has deprecated the way in which hostile witnesses are being cross-examined by the Public Prosecutors and the way in which the trial Judges remain as mute spectators and the relevant portions are extracted hereunder:-

“69. Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr.P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This is not sufficient. The object of the cross-examination is to impeach the accuracy, credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. What we are trying to convey is that it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the



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witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement.

.....

73. If the questioning by the public prosecutor is not skilled, like in the case at hand, the result is that the State as a prosecuting agency will not be able to elicit the truth from the child witness. It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice. Even if the prosecutor is remiss or lethargic in some ways, the court should control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an



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attitude of aloofness, the trial judge must exercise the vast powers conferred under Section 165 of the Evidence Act and Section 311 of the Cr.P.C. respectively to elicit all the necessary materials by playing an active role in the evidence collecting process. (See: Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors., (2004) 4 SCC 158).

74. The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during the chief examination or cross-examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. (See: (para 12) of State of Rajasthan vs. Ani alias Hanif & Ors., AIR 1997 SC 1023)”

7. In the case on hand, the learned Public Prosecutor has not even made any suggestions but as already pointed out, he has only put a



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formal question and never attempted to make cross-examination. Hence, the way in which the learned Public Prosecutor has proceeded, has to be deprecated. Considering the above, this Court is at loss to understand as to how the petitioner, after turning hostile, has sought for earlier disposal of the case.

8. Considering the facts and circumstances of the case, this Court has no hesitation to hold that the above petition has been filed abusing the process of law and hence, the petition is liable to be dismissed.

9. In the result, this Criminal Original Petition stands dismissed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns/csm

To

- 1.The Sessions Mahila Court, Madurai.
- 2.The District Collector, Madurai.
(for information and action)



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K.MURALI SHANKAR,J.

gns/csm

- 3.The Superintendent of Police,
Office of the Superintendent of Police,
Madurai, Madurai District.
- 4.The Inspector of Police,
Koodal Pudur Police Station,
Madurai, Madurai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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