

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P No.1727 of 2024
and W.M.P No.1774 of 2024

XXXXXXXX

...Petitioner

Vs.

State Rep. by
The Sub Inspector of Police,
K-4, Police Station,
Anna Nagar East,
Chennai – 600 102.

...Respondent

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to witness summons issued to LW1 dated 16th August 2023 in C.C.No.16218 of 2022 on the file of the V Metropolitan Magistrate Court, Egmore, Chennai and to quash the same.

For Petitioner : Mr.G.R.Hari

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the witness summons issued to the petitioner by the Vth Metropolitan Magistrate Court, Egmore, Chennai in the proceedings that is pending in C.C.No.16218 of 2022.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The petitioner gave a complaint to the respondent on 20.11.2020 to the effect that on that day at about 9.15 a.m., she was doing her regular morning walk and at that point of time, a man who was riding a blue scooter groped the chest of the petitioner and immediately he turned left and absconded from the place. According to the petitioner, this incident was captured in a camera that was available in the opposite house and the images were also shared with the respondent police. Based on this complaint, an FIR came to be registered in Crime No.990 of 2020 for offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. Initially, an FIR was registered against unknown accused person, since there was no clarity on the identity of the accused person.

4.The investigation was completed and final report was filed before the Court below which was taken on file in C.C.No.16218 of 2022 and cognizance was taken for offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

5.The petitioner has stated that she underwent an agonizing moment and she wanted to fight her case and therefore, gave a complaint to the police with the fond hope that the accused person will be identified and action will be taken against him in accordance with law. In fact, the petitioner had also collected the images that were captured in the CCTV footage and it was handed over to the police. For nearly three years, the petitioner was following up with the police.

6.On 11.08.2023, the petitioner was summoned before the Court below and she was waiting from 10 a.m. to 4.30 p.m., on that day. Nothing turned out on that day and the petitioner was unnecessarily made to recall that painful incident when she was waiting in the Court. The petitioner does not want to once again go through this painful process. Therefore, she has chosen to challenge the witness summon that has been issued to her.

7.This Court carefully went through the final report and the materials available on record. It is seen that the accused person has not been properly identified in this

case and there is no clarity with regard to the vehicle in which he traveled at the time of the incident. The accused person was apprehended in some other case and he is said to have confessed about this incident to the police during the investigation of the other case in which he was apprehended. Except this confession, there is no other material available in this case. The final report shows that there are two eye witnesses to the incident. Unfortunately, these eye witnesses can only speak about what happened at the relevant point of time without even identifying a person who was involved in that loathsome act. Therefore, the so-called eye witnesses also cannot help the prosecution.

8. It is an unfortunate case where the victim was virtually molested in broad daylight when she was engaged in her routine morning walk. The police were not able to properly identify the accused and the vehicle in which the accused person is said to have traveled has also not been identified. Therefore, if the petitioner undergoes trial, all types of embarrassing questions will be asked to the petitioner and she has to undergo further mental agony in the Court. This is more so since the petitioner has not identified the accused. The so-called eye witnesses who have not identified the accused person, can only speak about the incident and that will only cause further mental agony to the petitioner. At the best, what will come out of this case will be the sexual abuse suffered by the petitioner and nothing else. It is not necessary for a criminal trial to go on just to dabble with an incident involving sexual

abuse even without identifying an accused. If this is allowed, it is the victim who will actually be embarrassed and vilified and the so-called accused person will go scot-free, since he has not even been identified by any one in this case. No useful purpose will be served in proceeding further with C.C.No.16218 of 2022 and it will make a mockery upon womanhood and unfortunately, it is the petitioner who will be actually punished if the proceedings goes on.

9.The instant case brings to light the stark reality that is involved in sexual abuse cases. Not many are willing to come to Court and fight for the abuse that they underwent. Even for those who want to fight and establish their right, the system does not seem to be friendly and on the other hand, such victim will have to undergo embarrassing moments in the Court. For having given the complaint, the victim faces double whammy in terms of suffering a sexual abuse and embarrassment in Court which tantamounts to punishing the victim and the accused who has not even been identified, will go scot-free. This Court is not inclined to permit such mockery to continue in the present case.

10.In the light of the above discussion, apart from quashing the witness summons that was issued to the petitioner, this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India is also inclined to quash the proceeding in C.C.No.16218 of 2022 pending on the file of the V Metropolitan

Magistrate, Egmore on the ground that the very proceedings will result in a punishment to the petitioner for having raised her voice against sexual abuse underwent by the petitioner in the broad daylight. In the facts of the present case, this Court is forced to pass such an extraordinary order taking into consideration the dignity and interest of the petitioner.

11. In the result, this writ petition stands allowed in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

12. The Registry is directed to identify the victim girl as XXXXXXXX and wherever the name is mentioned in this writ petition, the same shall be blackened and shall be shown as XXXXXXXX.

29.01.2024

Index: Yes
Internet: Yes
Speaking order/Non-Speaking order
Neutral Citation: Yes/No
ssr

To

1. The V Metropolitan Magistrate Court,
Egmore, Chennai.

2. The Sub Inspector of Police,
K-4, Police Station,
Anna Nagar East,
Chennai – 600 102.

3. The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J

SSI

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