

Vinay Vs. The State of Karnataka

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Court : Karnataka

Decided On : Jul-13-2017

Judge : Rathnakala

Appeal No. : CRL.P 1195/2017

Appellant : Vinay

Respondent : The State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13h DAY OF JULY, 2017 BEFORE THE HONBLE MRS.JUSTICE RATHNAKALA CRIMINAL PETITION No.1195/2017 BETWEEN: VINAY S/O PRAKASH AGED ABOUT20YEARS R/AT THANGALAGERE VILLAGE BASARALU HOBLI MANDYA TALUK MANDYA DISTRICT PETITIONER (BY SRI.D.MOHAN KUMAR, ADV.,) AND: THE STATE OF KARNATAKA BY KERAGODU POLICE MANDYA DISTRICT REPRESENTED BY SPECIAL PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA BENGALURU - 560 001 RESPONDENT (BY SRI. S.VISHWAMURTHY, HC GP) THIS CRIMINAL PETITION IS FILED UNDER SECTION439OF CR.P.C., PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.194/2015 OF KERAGODU POLICE STATION, MANDYA FOR THE OFFENCE P/U/S376OF IPC AND SECTIONS4 8, 12 AND18OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012. THIS CRIMINAL PETITION COMING ON FOR

ORDER

S THIS DAY, THE COURT PASSED THE FOLLOWING:

2.

ORDER

Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent.

2. The petitioner is charge-sheeted in respect of Crime No.194/2015 by the respondent-police for the offences punishable under Sections 4, 8, 12 and 18 of the Protection of Children from Sexual Offences Act, 2012 (the Act for short) and Section 376 of IPC.

3. The gist of the allegation is that during the morning hours of 06.12.2015, the petitioner committed rape on the victim child, aged about 4 years.

4. When the case was taken up for consideration on 05.06.2017, it was noticed that the accused was procured before the Court on 19.03.2016 and the case was being posted for four hearings for framing of charges and plea and thereafter for sometime, it was posted for evidence and again on 15.04.2017, it was 3 posted for framing of charges and plea. Considering the omission on the part of the Court in not recording the evidence of the victim child within a period of thirty (30) days from the date of taking cognizance in compliance of the provisions of Section 35(1) of the Act, the petitioner was granted interim bail and the Registrar General was directed to make enquiry about non compliance of the provisions of Section 35(1) of the Act by the concerned Court.

5. Today, the learned counsel for the petitioner submits that on 15.06.2017, summons was issued to CWs.1 and 2 and further hearing date was scheduled to 30.06.2017. The petitioner, who was released on interim bail appeared before the Court on 30.06.2017 but CWs.1 and 2 did not appear. Summons issued to CWs.1 and 2 was unserved with the shara served on blood relative. Again summons is issued for the appearance of CWs.1 and 2 on 19.07.2017. Learned counsel further

submits that the petitioner will appear before the Court 4 regularly on all the hearing dates and will not tamper the prosecution witnesses.

6. In the light of the above situation, the petition is allowed. Petitioner is enlarged on bail in connection with Crime No.194/2015 registered by the respondent Police, subject to the following conditions: (i) He is enlarged on bail on executing a self bond for a sum of Rs.50,000/- with one surety for the likesum to the satisfaction of the Trial Court. (ii) He shall not tamper/terrorise or prevail upon the prosecution witnesses in any manner. (iii) He shall attend the Court regularly on all dates of hearing. (iv) He shall not make effort to approach the complainant or the family members either directly or telephonically. 5 7. While parting, having regard to the seriousness of the circumstance, it would necessitate this Court to observe as follows: While granting interim bail to the accused, on 05.06.2017 the Registrar General was directed as follows: Registrar General is directed to make enquiry about non compliance of the provisions of Section 35(1) of the Act by concerned Court in the matter and submit report before this Court as expeditiously as possible. Even if the Judicial Officer who initially handled the case is now transferred, the enquiry shall involve his explanation also. Now, the Registrar General has submitted his report. The explanation of the judicial officer, who handled the case from the date of charge sheet placed before him till he was transferred i.e. 18.05.2017 is also made part of the report. To summarise his explanation, 6 he was the I Additional District & Sessions Judge, Mandya, which is a Special Court for SC & ST (POA) Act and Electricity Act. The accused was produced before him for the first time i.e. on 05.03.2016 (as could be noticed from the copy of the order sheet maintained by the office of the said Court). The chargesheet was submitted before the Court on 01.03.2016. From then onwards, the case was adjourned to hear before charge upto 10.06.2016. In the meanwhile, the bail application filed by the accused is rejected. Charge was framed on 10.06.2016 and was adjourned to 01.07.2016 for production of properties and to fix the date of trial. Since property was not produced, the case took a deviation and went upto 09.12.2016 issuing show-cause notice to the Investigating Officer. However on 09.12.2016, the properties were produced and the case was adjourned to 23.12.2016 for fixing the date of trial. On the subsequent hearing date, it was adjourned on the request of defence counsel and trial was fixed to 7

20.01.2017 for two days and summons was issued to CWs.1 to 3 returnable by 06.03.2017 and CWs.4 to 8 returnable by 07.03.2017 and the witnesses did not turn-up from then onwards. The then Presiding Officer in his explanation submits that due to unavoidable and inevitable reasons, he could not record the evidence of the victim child within the time as per the mandate of Section 35(1) of the Act and he has not handled the case in casual manner. He has sought for pardon, if there is any mistake on his part in handling the case. The concern of this Bench handling the petitions under Sections 438 and 439 of Cr.P.C. is, day in and day out, bail petitions are moved before this Court in respect of the cases registered on the allegation of the offences under the Act and it has become a common ground in many of such bail petitions that for a long time, the accused is in custody and charge is not framed and a statement of the victim is not recorded in accordance with the mandate of Section 35(1) of the Act. 8 For the purpose of better understanding, the above statutory provision i.e., Section 35 (1) of the Act is reiterated below: 35. Period for recording of evidence of child and disposal of case. - (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. Sections 33 to 38 of Chapter VIII of the Act envisages the procedure and powers of Special Court and recording of the evidence. While adjudicating the present petition, this Courts focus is only on the period within which the evidence of the victim is to be recorded. The clock of limitation begins to run from the date the charge sheet tabled before the Court and cognizance is taken. Section 31 of the Act contemplates application of the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) to the proceedings before the Special Court for the purpose of said proceedings. The Special 9 Court shall be deemed to be a Court of Sessions and the Sessions conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor. Section 33(1) of the Act contemplates thus: 33. Procedure and powers of Special Court.-(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. Thus, it is clear that for taking cognizance, it is not necessary for the Court to wait for committal of the case or production of the

accused. To save time, it is required that the Special Court goes through the records, if there is material in respect of the offences alleged, shall take cognizance. Thus, the time to be spent for production of the accused to take cognizance can be saved. Further, it is needless to say that the words the evidence of the child appearing in Section 35(1) of the Act shall follow framing of charge. Before framing of charge, the case usually takes stop at the stage of to hear before charge, which would not happen until the defence and the prosecutor would submit to the Court to frame the charge or else, if application is filed by the defence for discharge under Section 227 of Cr.P.C., the Court is required to record a finding on the said application also. In that view of the matter, the stage prior to recording of the evidence is highly crucial for the Court. Since the time contemplated under sub- Section 1 of Section 35 of the Act has already started tickling and running. In that view of the matter, it is required for the Court at that stage as far as possible not to give any adjournments for the purpose to hear before charge and for framing of charge only. If the accused is in custody, within a short adjournment the victim shall be summoned to record the evidence. One has to view a situation where a victim child, who was of a tender age at the time of the incident, is brought before the Court after a year or two and made to depose. Naturally, it would be traumatic for the child to recall the details of the horrible experience. The other side of the story could be, the child could have been tutored under the guise of brushing his/her memory before commencement of recording of the evidence. In either way, there is likelihood of miscarriage of justice. It is said that time is the best healer, who knows that by passage of time victim and family members may give up and may not like to submit themselves for the hassles of cross-examination and Court procedure. Non- appearance of witnesses in the present case probabalises one such cause. It may be true that the Special Court is flooded with large number of cases under the General Law and also under other special statute, but the importance of recording of the evidence under Section 35(1) of the Act cannot be lost sight of for whatever reason. The Special Courts constituted under the Act henceforth shall keep in mind their obligation under Section 35(1) of the Act and shall not excuse themselves on the ground of heavy load of work, lack of time, non-production of properties etc. The Investigating Officer or his successor at the relevant point of

time shall also bind over himself to the mandate of Section 35(1) of the Act, though there is no such separate express provision for him. If the Presiding Officer notices callous attitude on the part of the Investigating Officer in producing the properties (as in this case), the same shall be brought on bench in the crimes meeting held with the Police Officers of the District and the matter shall be brought to the notice of the superior Police Officers. Even if the Investigating Officer fails to produce the property on the date called for, that shall not stop the Court from recording the statement of the victim child and adjourn the case to fix further date of trial. The Special Courts from this date onwards shall comply the mandate of Section 35(1) of the Act in its letter and spirit. Sd/- JUDGE LB

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