

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19064 of 2016

E.Manikandan

.. Petitioner/Accused

Vs

The State

Rep. by the Inspector of Police,
Valparai Police Station,

Valparai, Coimbatore District. ..Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 20.06.2016 in C.M.P.No. 275 of 2016 in S.C.No.42 of 2014 and recall the prosecution witnesses PW1 to PW4 and PW7 for cross examination by petitioner / accused side.

For Petitioner : Mr.S.Sudalaikani

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 20.06.2016 in C.M.P.No. 275 of 2016 in S.C.No.42 of 2014 and to recall the prosecution witnesses PW1 to PW4 and PW7 for cross examination by petitioner / accused side.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. The petitioner is facing trial in S.C.No.42 of 2014 before the Mahila Court, Coimbatore for offence under Section 376 r/w 511 IPC and also offence under Protection of Children from Sexual Offences Act, 2012 (POCSO Act) since, the victim girl was a minor, at that time of the incident. The prosecution examined the victim girl on 17.10.2014, but the accused did not choose to cross examine her. On 21.03.2016, the prosecution cross examined Eashwari (PW2), the mother of the victim girl and

Sundarammal (PW3) and the accused did not cross examine them. After the prosecution evidence was closed, accused was questioned under Section 313 Cr.P.C and thereafter, the accused filed C.M.P.No.275 of 2016 in S.C.No.42 of 2015 under Section 311 Cr.P.C for recalling cross examination of PW1 to PW4 and PW7, which was dismissed by the Trial Court on 20.06.2016, aggrieved by which, the petitioner is before this Court.

4. Learned counsel appearing for the petitioner submitted that the counsel on record for the accused in the Trial Court became Judicial Officer and therefore, the accused was not able to cross examine. This reason may not true, because the trial Court gave a finding that the accused was represented by Mr.Babu, Advocate and later by Jayapalchandran, Advocate who did not choose to cross examine the witnesses for the reasons best known to them. Section 33(5) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) clearly states as follows:-

"5. The Special Court shall ensure that the child is not called repeatedly to testify in the Court."

5. In view of the above, PW1 cannot be recalled for cross examination at the whims and fancies of the accused. It may be relevant to state that PW1 was examined in chief on 17.10.2014, but whereas the petition under Section 311 Cr.P.C has been filed only in June 2016, which clearly shows that the petitioner has been adopting dilatory tactics to delay the trial. The Supreme Court in Vinodh Kumar Vs. State of Punjab [2015(1) MLJ (Cr1) 288] has directed that the witness should be cross examined on that day, they are cross examined in chief and Court should not show any indulgence. In A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C., However, this Court is of the view, that it will be in the interest of the justice, if Eashwari (PW2) and Subramanian, the Investigating Officer (PW7) are recalled on certain conditions.

6. Accordingly, this Court directs the Trial Court to fix a date within two weeks from the date of receipt of a copy of this order and recall Eashwari (PW2) and Subramanian (PW7). On their appearance, the petitioner shall pay a cost of Rs.1000/- to each of them. The petitioner shall cross examine the witnesses on the day they are produced and boycott of Courts shall not be a reason for not cross examining PW2 and PW7. If the petitioner / accused fails to cross examine PW2 and PW7 on the day of their appearance, their right to cross examine the witnesses will stand forfeited.

With the above directions, this petition is ordered,
accordingly.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Inspector of Police,
Valparai Police Station,
Valparai, Coimbatore District.

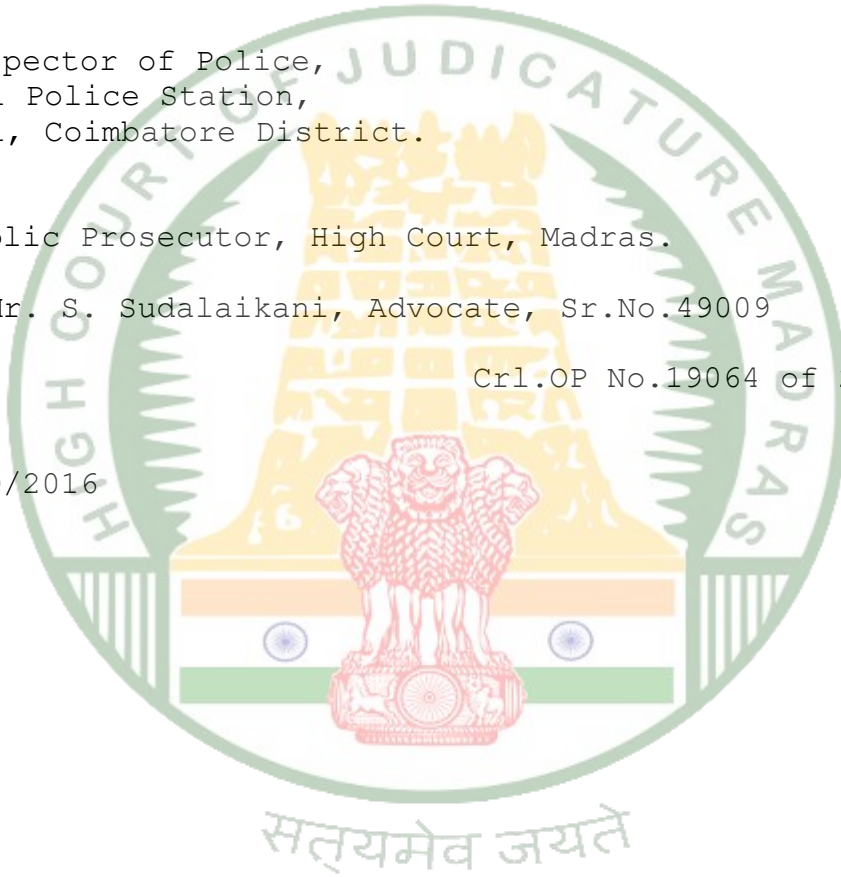
2. The Public Prosecutor, High Court, Madras.

+1 CC to Mr. S. Sudalaikani, Advocate, Sr.No.49009

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NRJK (CO)

MD : 14/09/2016



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