

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2016
CORAM
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.OP.No.25345 of 2016
and
CRL.MP.12300 of 2016

Prabhakaran

...Petitioner/Petitioner/
Accused

Vs

State rep. By
Inspector of Police
All Women Police Station,
Namakkal and District.

...Respondent/Respondent/
Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 03.11.2016 made in Crl.M.P.No.490 of 2016 in Spl.C.C.No.7 of 2016 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal by allowing the present Criminal Original Petition.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 03.11.2016 made in Crl.M.P.No.490 of 2016 in Spl.C.C.No.7 of 2016 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal.

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

3. It is seen that the petitioner is facing prosecution in Spl.C.C.No.7 of 2016 before the Fast Track Mahila Court, Namakkal for the offences u/s 366, 376 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"). It is seen that the minor child "X" was examined as PW-1 and she was subjected to cross-examination by the accused. Thereafter, the accused filed an application in Crl.M.P.No.490 of 2016 in Spl.C.C.No.7 of 2016 u/s 311 Cr.P.C., for recalling the child witness, for the purpose of cross-examination. After hearing both sides, the Trial Court, by the impugned order, has dismissed the petition, challenging which, the accused is before this Court.

4. Mr.B.Kumarasamy, learned counsel for the petitioner/accused submitted that the accused had failed to cross-examine the child witness with regard to certain relationship, which are very vital for the just decision of the case.

5. Per contra, the learned Additional Public Prosecutor submitted that the fact that the petition has been filed by the accused itself, does not justify the need for re-calling the child witness.

6. This Court gave its anxious consideration to the rival submissions.

7. On a reading of the petition in CrI.M.P.No.490 of 2016, it is seen that it has been filed by the petitioner/accused before the Trial Court, u/s 311 Cr.P.C., it is seen that the accused has merely stated that he wants to cross-examine the child witness, with regard to her previous statement and therefore, her further examination in cross is essential. The petition does not even contain any ground for maintaining it u/s 311 Cr.P.C. The petitioner should make out a reasonable cause for the Court to exercise its discretionary power. On the mere asking of the accused, a prayer under Section 311 Cr.P.C. cannot be granted. Recently, In State of Haryana Vs. Ram Mehar & others [2016 (8) Scale 192], the Supreme Court has cautioned against the indiscriminate exercise of power under Section 311 Cr.P.C., for the purpose of unnecessarily harassing the witnesses. In Section 33(5) of the POCSO Act, it is stated as follows:-

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

8. On account of this special provision, Section 311 Cr.P.C., is subject to Section 33(5) of POCSO Act.

9. In this case, the child witness has been cross-examined by the accused and once again, the present petition has been filed for the purpose of recalling the child witness.

10. Mr.Kumarasamy, learned counsel for the petitioner submitted that the child will be asked only question with regard to relationship and nothing more.

11. This Court is not able to countenance this submission because, if once witness is recalled, the defence has got every right to cross-examine the witness on all aspects and this Court cannot limit the power of cross-examination. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below.

12. In view of the foregoing, this Court is of the opinion that this petition is devoid of merits and is accordingly dismissed. Consequently connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court, Namakkal.
2. The Inspector of Police, All Women Police Station,
Namakkal and District.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.B.Kummarasamy Advocate sr 67813

Cr1.OP.No.25345 of 2016

pvs (co)
aa22/12/2016

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