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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.2710 of 2016

A.Varathan @ Varatharajan

.. Petitioner

Vs.

The Deputy Superintendent of police,
Law and Order, C2 Madurai City
Sellur Police Station,
Crime No.1196 of 2013

.. Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the entire records pertaining to the order rendered by the Mahila Sessions Judge, Madurai District in Cr.M.P.No.1680/2015, in S.S.C.no.7 of 2014 vide his order dated 23.12.2015 and by partly set aside the same from paying cost of Rs.25,000/-.

For Petitioner

:: Mr.V.Maharajan

For Respondent

:: Mrs.S.Prabha

Government Advocate (Crl. side)

O R D E R

Seeking to set aside the order passed in Cr.M.P.No.1680/2015 dated 23.12.2015, the petitioner has come up with this petition.

2. Heard the learned counsel for the petitioner ; the learned Government Advocate (Crl. Side) for the respondent and perused the materials placed on record.

3. It is seen that the petitioner is facing trial for offence under Section Protection of Children from Sexual Offences Act, 2012 and SC/ST (Prevention of Atrocities) Act, 1989. It is also seen that the prosecution has examined 12 witnesses and the petitioner has not chosen to cross examine them. Thereafter, the petitioner has filed a petition under Section 311 Cr.P.C. in Cr.M.P.No.1680 of 2015, which

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came to be allowed by the trial Court on 23.12.2015, on condition that he should deposit a sum of Rs.25,000/- to the Legal Aid Services



Authority as cost, on or before 07.01.2016. Challenging which, this petition has been filed.

4. On a reading of the impugned order, it is seen that this petitioner has been adopting dilatory tactics by not cross examining the victim girl also, despite several opportunities. However, the trial Court had felt that it will be in the interest of justice, if opportunity is given to the petitioner to cross examine the witnesses, provided, he pays a sum of Rs.25,000/- as cost to the Legal Aid Services Authority.

5. In **State of Uttar Pradesh v. Sambunath Singh** reported in **JT (2001) (4) SCC 319**, the Supreme Court has stated that if the accused adopts dilatory tactics by not cross examining, the trial Court can remand the accused under custody under Section 309 Cr.P.C. In this case, the accused is enjoying bail and the trial Court has not adopted the extreme step of remanding the accused, but has only ordered cost. Therefore, I am of the view that the order of the trial Court does not suffer from any infirmity. However, time is granted till 25.02.2016 for the petitioner to pay the cost. If the petitioner is adopting dilatory tactics, this Court directs the trial Court to remand the petitioner and proceed with the trial under Section 309 Cr.P.C.

With the above observations and direction, the petition is disposed of.

Sd/-

Assistant Registrar(C.O.) (I/C)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge, Mahila Court, Madurai.
- 2.The Deputy Superintendent of police,
Law and Order, C2 Madurai City, Sellur Police Station,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Officer-in-Charge,
District Legal Aid Services Authority, Madurai.

+1cc to Mr.V.Maharajan, Advocate SR.No.8984