

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 10.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

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**Crl.O.P. (MD)No.2626 of 2017
and CRL.M.P. (MD) No.2003 of 2017**

Ramiyan : Petitioner/Accused

Vs.

The State represented by
The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
(Crime No.04 of 2013)

: Respondent/Complainant

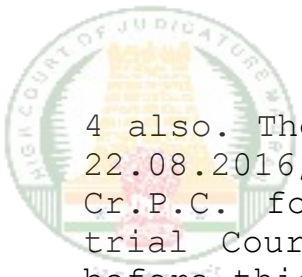
Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the entire records pertaining to the order passed by the Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur in Cr.M.P.No.559 of 2016 in S.C.No.28 of 2013 dated 13.10.2016 and set aside the same.

For Petitioner : Mr.M.Pitchai Muthu

For Respondent : Mr.A.P.Balasubramani
*******O R D E R**

This petition has been filed seeking to set aside the order of the Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur in Cr.M.P.No.559 of 2016 in S.C.No.28 of 2013 dated 13.10.2016.

2.The petitioner is facing prosecution in S.C.No.28 of 2013 before the Mahila Court, Thanjavur for offences under Sections 376, 506(i) of I.P.C. and Section 3(a) and 4 of Protection of Children from Sexual Offences Act, 2012. After the charges were framed against the accused P.W.1 mother of the victim girl, P.W.2 victim girl were examined in chief on 09.03.2015. The petitioner did not cross-examine the said witnesses. The case was adjourned to 10.03.2017 and on that date father of the victim girl was examined as P.W.3 and a relative of the victim girl who had written the complaint which formed basis for the F.I.R. was examined as P.W.4. The petitioner did not cross-examine P.Ws.3 and



4 also. Thereafter, the petitioner filed CrI.M.P.No.559 of 2016 on 22.08.2016, which is almost 1½ years later under Section 311 Cr.P.C. for recalling P.Ws.1 to 4, which was dismissed by the trial Court on 13.10.2016, challenging which, the petitioner is before this Court.

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3.Heard Mr.M.Pitchai Muthu, learned counsel appearing for the petitioner/accused and Mr.A.P.Balasubramani, learned Government Advocate appearing for the respondent.

4.Mr.M.Pitchai Muthu, learned counsel appearing for the petitioner submitted that in a case of this nature, a fair opportunity should be given to the accused to effectively defend himself. He contended that the counsel on record for the petitioner suffered eye ailment on 09.03.2015 and 10.03.2015. That is why the witnesses were not cross-examined on that day. He also submitted that the trial Court has issued a notice dated 10.01.2017, calling upon the accused to show cause as to why the bail granted to him should not be cancelled as he is adopting dilatory tactics. Mr.M.Pitchai Muthu refuted the said contention.

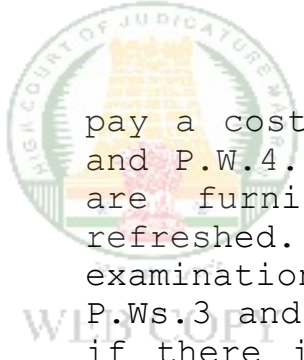
5.The fact remains that the accused is facing serious charges for offences under Sections 376, 506(i) of I.P.C. and Section 3(a) and 4 of Protection of Children from Sexual Offences Act, 2012 on the allegations that he had ravished a minor girl 14 years old. Admittedly, on the date of incident the accused is said to have been 52 years of age and has children and grand-children. Even if the counsel had suffered eye ailment on 09.03.2015 and 10.03.2015, a petition to recall should have been filed immediately thereafter, but whereas only 1½ years later petition under Section 311 Cr.P.C. has been filed, which shows that the accused wants to somehow protract the case. In **Vinoth Kumar v. State of Punjab [2015 (3) SCC 220]**, the Hon'ble Supreme Court has directed that the prosecution witnesses should be cross-examined on the date when they are examined in chief. A Circular of the Registrar General has also been issued to all trial Court to scrupulously adhere to the mandates of the directions issued by the Hon'ble Supreme Court in the said case. The trial Court relied upon the said decision and rightly dismissed the petition filed by the petitioner. That apart Section 33(5) of Protection of Children from Sexual Offences Act, 2012 reads as follows:

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

6.In the light of the above, it is not a fit case to interfere with the order passed by the trial Court. However, this Court is of the view that interest of justice will be served if one opportunity is given to cross-examine P.W.3 and P.W.4.

<https://hcservices.ecourts.gov.in/hcservices/>

7.Accordingly, this Court directs the trial Court to recall P.Ws.3 and 4 on the date of their appearance, the petitioner shall



pay a cost of Rs.1000/- (Rupees One Thousand only) each to P.W.3 and P.W.4. The learned Magistrate shall ensure that P.Ws.3 and 4 are furnished their chief examination and their memory is refreshed. Only thereafter, they can be subjected to cross examination by the petitioner / accused. On the appearance of P.Ws.3 and 4, if the petitioner does not cross-examine them, even if there is a boycott of the Court, the petitioner will forfeit his right of cross-examination. If P.W.3 and P.W.4 turn hostile the trial Court can proceed with the appreciation of evidence given in chief.

8. With the above directions, this Criminal Original Petition is ordered accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court (Fast Track Mahila Court),
Thanjavur.
2. The Inspector of Police,
Orathanadu Police Station,
Tanjavur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Sj

AE/RR/SAR3/06.04.2017/3P/4C

Order made in
Crl.O.P. (MD) No.2626 of 2017
and CRL.M.P. (MD) No.2003 of 2017
10.03.2017