



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.7451 of 2017
and
Crl.M.P. (MD) No.5082 of 2017

V.Satheeskumar

: Petitioner

-Vs-

The State,
Rep. by the Inspector of Police,
All Women Police Station,
Samayanallur, Madurai District.
In Crime No.65 of 2015.

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records pertaining to the dismissal order made in Cr.M.P.No.680 of 2017 in S.C.No.41 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, dated 04.05.2017 filed under Section 311 of the Code of Criminal Procedure and set aside the same.

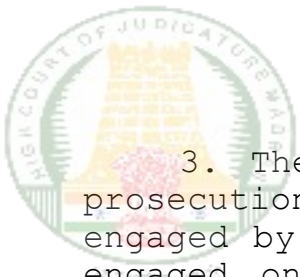
For Petitioner : Mr.M.A.Abdul Muthalif

For Respondent : Mr.K.Anbarasan,
Government Advocate (Crl.side)

O R D E R

The petitioner is facing trial in S.C.No.41 of 2016 before the Mahalir Court, Madurai, for offences under Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012. The prosecution examined P.Ws.1 to 7 and they were not cross-examined by the petitioner. Therefore, the petitioner filed Cr.M.P.No.680 of 2017 under Section 311 of the Code of Criminal Procedure for recalling P.Ws.1 to 7, which has been dismissed by the Trial Court on 04.05.2017, challenging which, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondent.



3. The learned counsel for the petitioner submitted that the prosecution witnesses could not be cross-examined as the counsel engaged by them had gone out of station and that a new counsel was engaged on 21.02.2017 and he had filed copy application for the deposition of the witnesses and obtained the same only on 27.03.2017. Therefore, the learned counsel submitted that the prosecution witnesses should be recalled, otherwise, undue prejudice will be caused to the accused.

4. Per contra, the learned Government Advocate (Criminal side) refuted the submissions.

5. On a reading of the petition filed by the accused in Cr.M.P.No.680 of 2017 under Section 311 of the Code of Criminal Procedure, it is seen that he has not given any valid reasons for recalling the witnesses *en masse*. Under Sub-Section 2 (proviso - b) of Section 309 of the Code of Criminal Procedure reads as follows:

"the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment."

6. Section 33(5) of the Protection of Children from Sexual Offences Act, 2012, reads as follows:

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

7. The Trial Court has rightly relied upon the judgment of this Court in **S.Chandra Varman v. State represented by Inspector of Police [2016(2) Law Weekly (Cr1.) 340** and also the judgment of the Supreme Court in **Vinod Kumar Vs. State of Punjab [2015(1) MLJ (Cr1) 288 (SC)]** and had dismissed the petition. Under such circumstances, this Court does not find any serious infirmity in the order passed by the Court below. However, taking into consideration the case of the accused, this Court is of the view that it will serve the interest of justice, if the accused are permitted to cross-examine two witnesses viz., Mahalingam (L.W.2) and Geetha Devi (L.W.7), Inspector of Police, on certain terms.

8. In the result, this petition is partly allowed and the petitioner is directed to deposit Rs.2,000/- (Rupees Two Thousand only) to the credit of S.C.No.41 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, within two weeks from the date of receipt of a copy of this order and on such deposit, the Trial Court is directed to recall Mahalingam (L.W.2) and Geetha Devi (L.W.7), Inspector of Police, for the purpose of cross-examination. On the day of their appearance, the Trial Court shall furnish them their deposition in chief for them to read and refresh their memory and only thereafter, they can be cross-examined by the counsel for the accused. On the day of their appearance, if the accused fails to cross-examine them including for reasons of boycott of Court, the accused will forfeit his right to cross-



examine the said two witnesses. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahalir Neethimandram,
Madurai.
2. The Inspector of Police,
All Women Police Station,
Samayanallur, Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

TE/GT/SAR-IV : 27/06/2017 : 3P/4C

Order made in
CRL.O.P.(MD) No.7451 of 2017 and
Crl.M.P.(MD)No.5082 of 2017
Dated: 19.06.2017