



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2017

CORAM

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THE HON'BLE MR.JUSTICE V.BHARATHIDASANCrI.O.P.(MD).No.9401 of 2017andCrI.M.P.(MD).No.6403 of 2017

Saravanan

... Petitioner / Accused

Vs.

State represented by
The Inspector of Police,
B-3, Teppakulam Police Station,
in Cr.No.995 of 2015
Madurai.

... Respondent /Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to set aside the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in CrI.M.P.No.506 of 2017 in Spl.S.C.No.8 of 2016, dated 26.05.2017.

For petitioner	: Mr.T.Palanisamy
For respondent	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed challenging the order dismissing the application filed under Section 311 of Cr.P.C.

2. The petitioner is a sole accused in Spl.S.C.No.8 of 2016 on the file of learned Sessions Judge, Mahalir Neethimandram, Madurai and he has been charged for the offences under Sections 7 and 8 of Protection of Children from Sexual Offences (POCSO) Act, 2012. After the commencement of the trial, the prosecution examined three witnesses. P.W.1 is the mother of the victim girl, P.W.2 is the father of the victim girl and P.W.3 is the victim girl in this case. On that day when the accused was present in the case, the counsel for the accused was not present and did not cross-examine. Thereafter, the petitioner filed an application to recall the above three witnesses for the purpose of cross-examination. The Court below dismissed the application stating that P.W.3 is the minor girl and Section 33(5) of the POCSO Act says "The Court shall ensure that the child is not called repeatedly to testify in the Court". Apart from that, even



though the chief examination was over on 14.12.2016, the present application to recall the witnesses has been filed on 07.03.2017. Now, challenging the same, the present Criminal Original Petition has been filed.

3. Heard Mr.T.Palanisamy, learned counsel appearing for the Petitioner and Mr.C.Mayilvahan Rajendran, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

4. The petitioner has been charged for the serious offence under Sections 7 and 8 of Protection of Children from Sexual Offences (POCSO) Act, 2012. Even though the petitioner was present in the case, since the counsel for the petitioner was not present, he is not able to cross-examine the witnesses. It is true that P.W.3 is the child witness and the child witness should not be called repeatedly to testify in the Court. But, considering the gravity of charge levelled against the petitioner and in the interest of justice, opportunity should be given to the petitioner.

5. In the above circumstances, the order passed by the Court below in Spl.S.C.No.8 of 2016, dated 26.05.2017 is set aside. The respondent police is directed to produce the witness before the trial Court on 20.09.2017 and the petitioner should cross examine them on that day and the Court below should complete the cross-examination on the same day and thereafter proceed with the matter in accordance with law. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Sessions Judge, Mahalir Neethimandram, Madurai.
 - 2.The Inspector of Police,
B-3, Teppakulam Police Station, in Cr.No.995 of 2015,
Madurai.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- ls/akv
RL/4C/2P/RSK/SAR1/15/9/2017

CrI.O.P. (MD) .No.9401 of 2017
and
CrI.M.P. (MD) .No.6403 of 2017