



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

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CrI.O.P.(MD).No.23506 of 2016
and
CrI.M.P(MD).No.12402 of 2016

P.Ganesh Kumar ... Petitioner/ Petitioner/ Accused

-Vs-

State represented by
The Inspector of Police,
All Woman Police Station,
Tallakulam Police Station,
Madurai.

... Respondent/Respondent/Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned order dated 24.11.2016 in Criminal Miscellaneous Petition No.1402 of 2016 in Special Sessions Case No.32 of 2015 on the file of the Sessions Judge, Mahalir Neethimandram, Madurai and set aside the same and consequently allow the petition to recall the PW1 for cross-examination.

For Petitioner : Mr.S.Muthalraj

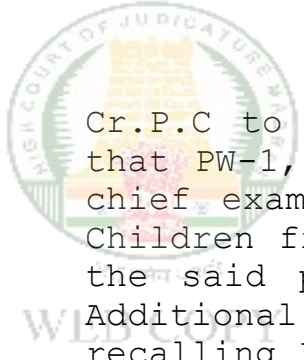
For Respondent : Mr.K.S.Durai Pandian
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order in CrI.M.P.No.1402 of 2016 in Special Sessions Case No.32 of 2015, on the file of the Sessions Judge, Mahalir Neethimandram, Madurai, dated 24.11.2016.

2.The petitioner is an accused in a criminal case, wherein the petitioner was charged for the offences punishable under Section 9 of the Prohibition of Child Marriage Act 2006 and Sections 5(1) & 6 of the Protection of Children from Sexual Offences Act 2012.

3.It is submitted that the victim girl was examined in chief but was not cross examined by the defence side. Later, a petition was filed by the petitioner in Cr.M.P.No.1402 of 2016 in Special Sessions Case No.32 of 2015, under Section 311 of



Cr.P.C to recall PW-1 for cross examination. It is to be noted that PW-1, the victim girl was aged about 16 years at the time of chief examination. Relying upon Section 33(5) of Protection of Children from Sexual Offences Act, 2012, the Lower Court dismissed the said petition, despite the endorsement made by the learned Additional Public Prosecutor stating that he has no objection for recalling PW-1 for cross examination.

4. Though the petitioner was charged for serious offences, the information, that was furnished from the First Information Report, does not reveal any criminal intimidation by the petitioner. It is not known that whether the victim girl was a minor at the time, when she was examined as PW-1. The petition filed by the petitioner to recall PW-1, was dismissed by the lower Court stating that the Special Court shall ensure that the child is not called repeatedly to testify in the Court as if the power of the Court to recall the witness for cross examination has been taken away by the express provision under Section 33(5) of Protection of Children from Sexual Offences Act, 2012. It is further stated that the delay for filing the petition was not properly explained by the petitioner.

5. Having regard to the contents of the First Information Report and the peculiar facts in this case, this Court is of the view that the petitioner should be given an opportunity to recall PW1 for further investigation. Hence, this Court is inclined to allow this petition on terms.

6. As a result, this criminal original petition is allowed and the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, dated 24.11.2016 in Cr.M.P.No.1402 of 2016 in Special Sessions Case No.32 of 2015 is set aside and the petition in Cr.M.P.No.1402 of 2016 in Special Sessions Case No.32 of 2015 is allowed subject to the condition that the petitioner shall deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) to the victim girl / PW-1 by a demand draft within a period of two weeks from the date of receipt of a copy of this order and on further condition that the petitioner shall cross examine PW-1, on the date when she is available, without seeking any further adjournments on any other ground. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

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

1. The Sessions Judge, Mahalir Neethimandram,
Madurai.



2.The Inspector of Police,
All Woman Police Station,
Tallakulam Police Station,
Madurai.

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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.MUTHALRAJ,Advocate,SR.93316

Cr1.O.P. (MD) .No.23506 of 2016
13.12.2017

RMK

KK/SV MMS/SAR 1/24.01.2018/ 3P- 5C/