

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.7357 of 2018

Mr.Siva Kumar @ Doom Siva

...Petitioner/Accused

Vs

State Represented by
Inspector of Police,
W-17, All Woman Police Station,
(Crime No.6 of 2015)
Peravalur, Chennai.

... Respondent/Complainant

Prayer:-

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order dated 23.02.2018, passed by the Learned Additional Session Judge, Mahila Court, Chennai in Crl.M.P.No.2737 of 2018 in S.C.No.381 of 2016 on the file of the respondent.

For Petitioner : Mr.K.Shankar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

O R D E R

The petitioner is facing the prosecution in S.C.No.381 of 2016 before the Mahila Court, Chennai for the offence under Section 6 of POCSO Act. The victim girl was aged about 17 years and that the allegation is that the accused had eloped with her. On the complaint given by the victim girl's mother, an FIR was registered and after completing the investigation, a charge sheet has been filed. The victim girl was examined in chief on 02.11.2017 and she was not cross examined by the accused. The accused filed the application in Crl.M.P.No.3727 of 2018 under Section 311 Cr.P.C. to recall the victim girl, which has been dismissed by the Trial Court on 23.02.2018. Challenging which, the accused is before this Court.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents.

3. Mr.K.Shankar, learned counsel for the petitioner submitted that the victim girl-PW2, has married the accused on 13.02.2018 and at the time of her chief examination, she has stated so.

4.Under normal circumstances, this Court would not recall the victim girl, in view of Section 35 of POCSO Act. However, on reading of examination in chief of PW2, she has stated that she has married the accused and living with him and has a child through him.

5.In such view of the matter, this petition is allowed and the trial Court is directed to recall the victim girl-PW2, on a date fixed by the trial Court for the purpose of cross examination by the accused. On appearance of the victim girl, if the accused fails to cross examine her on account of boycott of the Court or any other reasons, he will forfeit his right to recall PW2.

6.With the above direction, this petition is allowed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Session Judge,
Mahila Court, Chennai.
2. Inspector of Police,
W-17, All Woman Police Station,
(Crime No.6 of 2015)
Peravalur, Cheenai.

3. The Public Prosecutor
High Court, Chennai.

+1cc to Mr.K.Shankar, Advocate, S.R.No.54580

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SSV(CO)
CS/05/09/18