

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.08.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20352 of 2018
and CRL.M.P.No.10935 of 2018

Samuvel @ Saminathan ... Petitioner

Vs

The Sub Inspector of Police,
All Women Police Station,
Vellore District.
Crime No.4/2017 ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order passed by the learned Fast Track Magalir Neethimandram [Sessions Court], Vellore, Vellore District dated 12.07.2018 in Crl.M.P.No.296 of 2018 in Spl.C.C.No.46 of 2017.

For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.C.Raghavan, GA

O R D E R

The petitioner is facing prosecution in Spl.C.C.No.46 of 2017 before the Mahila Court [Sessions Level], Vellore District for the offence under POCSO Act. PW1 to PW8 were examined in-chief on 28.12.2017. On that day, the petitioner did not cross-examine the said witnesses. Thereafter, the petitioner filed Crl.M.P.No.296 of 2018 in Spl.C.C.No.46 of 2017 under Section 311 Cr.P.C. for recalling PW1, PW2 and PW8, which has been dismissed by the trial Court on 12.07.2018. Aggrieved by which, the petitioner is before this Court.

2.Heard Mr.E.Kannadasan, learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3.Mr.Kannadasan submitted that the Court had appointed a Legal Aid counsel to defend the accused and on account of some difference of opinion between them, the accused changed his counsel and engaged a new counsel. Hence, Mr.Kannadasan

submitted that an opportunity may be given to cross-examine the said witnesses.

4.Per contra, the learned Government Advocate refuted the contentions.

5.This Court gave its anxious consideration to the rival submissions. It is seen that the witnesses were examined on 28.12.2017. On the same day, the petitioner should have cross-examined the witnesses as directed by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in (2015[1] MLJ [Crl] 288). However, for the reasons best known to the petitioner, the witnesses were not cross-examined. Six months later, this petition in Crl.M.P.No.296 of 2018 has been filed. Even in the petition, the petitioner has not given any satisfactory reason, as to why he did not cross-examine the said witnesses. The victim girl-PW2 cannot be recalled, in view of Section 33[5] of the POCSO Act which reads as under :

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

6.However, this Court is of the view that an opportunity may be given to the petitioner to cross-examine PW1 and PW8 on certain conditions. The trial Court shall first ascertain the availability of PW1. If PW1 is dead or has shifted out of Tamilnadu seeking employment elsewhere, he need not be recalled. After ascertaining the availability of PW1, the trial Court shall fix a date and recall PW1 and PW8. On that day, the petitioner shall pay them, cost of Rs.1,000/- each. The witnesses shall be furnished with their deposition in-chief, so that they can refresh their memory and only thereafter, they can be subjected to cross-examination by the accused. Boycott of Court shall not be a reason for not cross-examining PW1 and PW8, when they appear for giving evidence. If the accused adopts any dilatory tactics, the trial Court shall remand him to custody, in the light of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh JT 2001 [4] SC 319.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Magalir Neethimandram,
[Sessions Court], Vellore,
Vellore District.

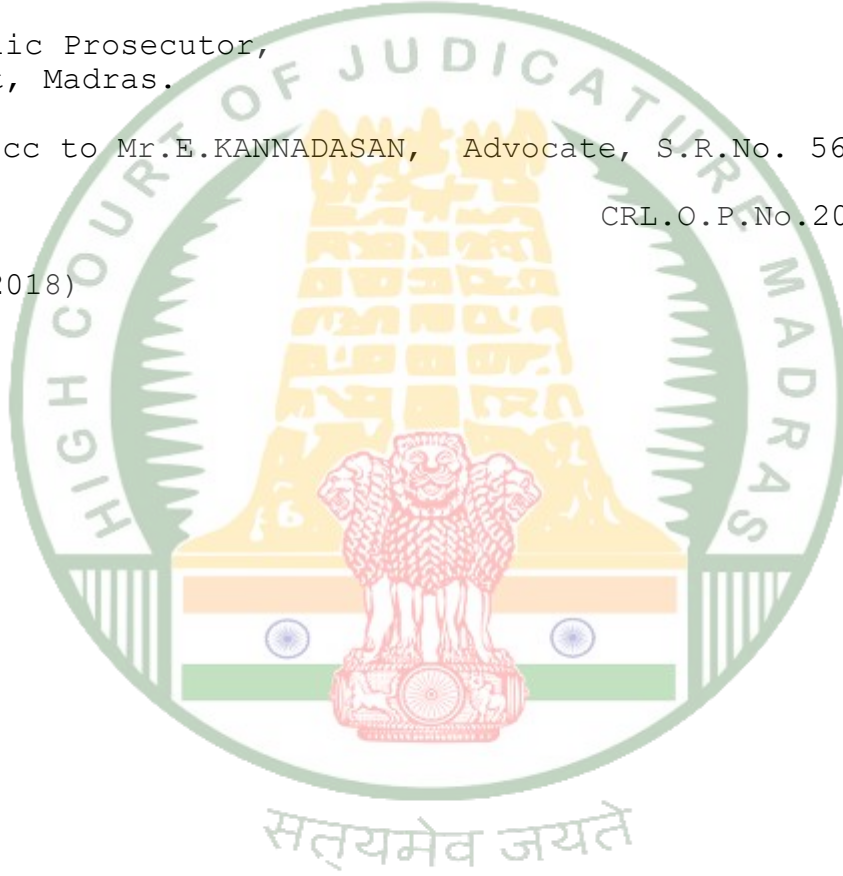
2.The Sub Inspector of Police,
All Women Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.KANNADASAN, Advocate, S.R.No. 56752

CRL.O.P.No.20352 of 2018

CP(CO)
TR(21/08/2018)



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