

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.10.2018

DELIVERED ON: 11 .10.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.22234 of 2018 & Crl.M.P. No.12291 of 2018

Crl.O.P. No.23209 of 2018 & Crl.M.P. No.12959 of 2018

James Maria Gnanaraj Petitioner in both the Crl.O.Ps.

vs.

The State represented by
the Inspector of Police
W7, All Women Police Station
Anna Nagar
Chennai

Respondent in both the Crl.O.Ps.

Prayer in Crl.O.P. No.22234 of 2018:

Criminal Original Petition filed under Section 407 Cr.P.C. seeking to transfer S.C. No.163 of 2018 pending trial on the file of the Sessions Judge (Mahila Court), Chennai, to any other competent Court having jurisdiction.

Prayer in Crl.O.P. No.23209 of 2018:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records pertaining to the order dated 07.09.2018 passed in Crl.M.P. No.15180 of 2018 in S.C. No.163 of 2018 on the file of the Sessions Judge (Mahila Court), Chennai and set aside the same insofar as dismissal against P.W.1.

For petitioner in
both the Crl.O.Ps.

Mrs. Selvi George

For respondent in
both the Crl.O.Ps

Mrs. M. Prabhavathi
Addl. Public Prosecutor

COMMON ORDER

Since both these Criminal Original Petitions emerge from the same Sessions Case and also since the parties in both the cases are the same, they are considered and decided by this common order.

2 The factual matrix of the case is as under:

2.1 The victim girl in this case, viz., X (for the sake of anonymity), was studying in III standard in a local school during July 2015. On 09.07.2015, she returned from school and complained of pain below her abdomen. When she was repeatedly questioned by her mother, she told her that her Yoga teacher by name James took her to the third floor of the school, undressed her and made her lie on her back and lay on her and thereafter, he also threatened her not to make any noise.

2.2 Aghast at her revelations, the victim girl's mother lodged a complaint with the police, based on which, the Inspector of Police, W7, All Women Police Station, Anna Nagar, Chennai, registered a case in Cr. No.3 of 2015 under Section 10 read with Section 9(f) of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act") and commenced the investigation. The petitioner/accused was arrested by the police and was later released on bail.

2.3 The police completed the investigation and filed a final report for the offence under Section 10 of the POCSO Act before the Special Court for POCSO Act Cases (Mahila Court), Chennai, which was taken on file as Special S.C. No.163 of 2018.

2.4 On the appearance of the accused, copies of documents under Section 207, Cr.P.C. were served on him on 18.06.2018. The accused engaged a counsel by name Mr. Johnson to defend him. The Trial Court framed a charge under Section 6 of the POCSO Act against the accused on 30.07.2018 and when questioned, he pleaded "not guilty". Therefore, the Trial Court fixed the calendar for examination of the witnesses and posted the case to 20.08.2018 and issued witness summons to L.Ws.1 to 3.

2.5 On 20.08.2018, L.Ws.1 to 3 (including the victim girl) were present in the Court for giving evidence. On that day, the accused did not appear, but, engaged another counsel by name M/s. Jeyakumar and Selvi George to defend him.

2.6 The new counsel filed an application under Section 317 Cr.P.C. and sought adjournment. The Trial Court refused to grant adjournment since witnesses were present and began the trial with the examination of the victim girl as P.W.1.

2.7 The victim girl was examined in a specially constructed child-friendly room equipped with audio and video recording facilities. The counsel for the accused did not cross-examine P.W.1, viz., the victim girl and sought adjournment. The Trial Court refused grant of adjournment and proceeded to examine the parents of the victim girl, viz., P.W.2, the father and P.W.3, the mother. Since M/s. Selvi George and Jeyakumar, counsel for the accused did not cross-

examine the witnesses, but, sought adjournment, the Trial Court refused grant of adjournment and recorded "no cross". The case was adjourned to 17.09.2018 for examination of further witnesses.

2.8 In the meantime, the accused filed an application under Section 311 Cr.P.C. which was numbered as Crl.M.P. No.15180 of 2018, in which, notice was ordered to the Public Prosecutor, who filed a counter dated 06.09.2018. The Trial Court passed orders in Crl.M.P. No.15180 of 2018 on 07.09.2018 recalling P.Ws.2 and 3 on payment of costs of Rs.2,000/- each, but, dismissed the petition qua P.W.1, the victim girl. Under such circumstances, the accused has filed Crl.O.P. No.22234 of 2018 for transfer of the case by levelling allegations against the Trial Judge, besides filing Crl.O.P. No.23209 of 2018 seeking to set aside the order dated 07.09.2018 passed by the Trial Court, refusing to recall P.W.1.

3 In support of Crl.O.P. No.22234 of 2018, the accused has filed an affidavit dated 12.09.2018, wherein, he has made the following allegations against the Trial Judge:

i the Trial Judge proceeded to examine the witnesses on 20.08.2018 in his absence and refused to grant adjournment even though she was informed by the new counsel that they need time to prepare the case;

ii the accused obtained certified copy of the evidence of the victim girl (P.W.1) and was shocked to note that the victim girl had identified him by looking at a photo; however, no such photo was actually shown to the victim girl; in other words, the Trial Judge had herself included in the deposition of the victim girl, as if the victim girl identified the accused after seeing the photograph.

iii the Trial Judge did not hear the arguments of his counsel Mrs. Selvi George on 07.09.2018 before passing orders in the recall petition in Crl.M.P. No.15180 of 2018 even though her junior counsel Mr. Manikandan requested the Trial Judge to wait for his senior to come.

iv Mrs. Selvi George, his counsel, rushed to the Court and cited certain rulings of the Supreme Court in support of the recall petition, which, the Trial Judge refused to even look into;

v the Trial Judge told the counsel that this is a Special Court and the case is a summary proceedings case and that the Code of Criminal Procedure will not apply.

4 In support of allegation no. (v) above, Mrs. Selvi George and her junior counsel Mr. Manikandan have filed their affidavit.

5 Mrs. Selvi George, in her affidavit, has reiterated that in the chief-examination of the victim girl, her school certificate alone was shown to her and apart from that, no other document was shown to her and that the photograph of the accused was not at all shown to her. She also submitted that she made an oral request for deferring the cross-examination of the victim girl and that the said request was turned down by the Trial Court.

6 Coming to the incident on 07.09.2018, she has stated in her affidavit, as follows:

"4. I state that subsequently I have filed a petition to recall the witnesses under Section 313 Cr.P.C. in Crl.M.P. No.15180 of 2018 in the above S.C. 163 of 2018 on 05.09.2018 and the same was served on the Prosecutor and the case was posted on 06.09.2018 and 07.09.2018. I state that my junior Manikandan was waiting outside the Court hall since 10.30 a.m. on 07.09.2018, as in camera proceedings were taken up and nobody except the concerned advocates were allowed inside the Court hall. On the same day, at about 3.30 p.m., the recall application in Crl.M.P. No.15180 of 2018 was called and a counter statement was served on my junior Manikandan and he requested for a short pass over to enable me to argue the matter. However, the Hon'ble Trial Court refused to accommodate even for a short pass over and proceeded to dictate orders in Crl.M.P. No.15180 of 2018. Hence, he went out of the Court hall and immediately, informed me about this over phone and within few minutes, I rushed to the Court and made an attempt to argue the matter. However, I was also not permitted to argue the matter and it was informed to me that already orders were passed. The application was filed to recall all the three witnesses for cross-examination. In fact, I have produced judgments rendered by the Hon'ble Apex Court which supports the issue (Recall of prosecution witnesses) of this nature however the Trial Court abruptly rejected and refused to even look into the orders passed by the Hon'ble Supreme Court. I state that during the course of hearing, the Hon'ble Trial Court had informed that such applications are not maintainable and that the Court is a Special Court and that the case is a summary proceeding case and the Code of Criminal Procedure is not applicable in the cases of this nature and as per the provisions of the Act, the victim girl cannot be asked to appear repeatedly."

7 On 24.09.2018, this Court directed the Registry to send copies of the affidavits of the accused and M/s. Selvi George and Manikandan to the Trial Judge seeking her explanation. The Trial Judge has sent her detailed explanation vide communication dated 05.10.2018 in answer to the allegations levelled against her by the accused and his counsel. On 09.10.2018, Mrs. Selvi George, learned counsel for the accused was permitted to peruse the same.

8 Before advertng to the allegations levelled against the Trial Judge, it may be necessary for this Court to refer to the circumstances under which the Special Courts under the POCSO Act were constituted.

9 In every district in the State of Tamil Nadu, Mahila Courts at Sessions level have been constituted to deal exclusively with cases in which the victims are women. These Courts deal with cases arising (i) under Section 302 IPC (murder) and Section 306 IPC (suicide), where, the deceased is a woman, (ii) under Section 376 (rape), (iii) 304-B IPC (dowry death), etc. After the coming into force of the POCSO Act, the State Government has notified the Mahila Court (Sessions level) as the Special Court for POCSO Act Cases.

10 Information supplied by the Registry shows that the Mahila Judge, Chennai, has earmarked Mondays and Fridays for hearing the cases arising under the POCSO Act and other days for hearing the other IPC cases. Further, on an average, per day, the board of the Mahila Judge, Chennai, has 30 to 35 cases including Miscellaneous Applications like, bail, etc.

11 On 20.08.2018, the Mahila Judge, Chennai has examined 21 witnesses relating to POCSO Act cases, including the three witnesses in this case. Likewise, on 07.09.2018, she has examined 15 witnesses and has also dealt with the Miscellaneous Application filed under Section 311 Cr.P.C. in this case. These details are given only to show the amount of pressure under which the Trial Courts are functioning, without understanding which, reckless allegations are made by parties against them.

12 Now, coming to the allegation that the Trial Judge has proceeded with the examination of P.Ws.1 to 3 on 20.08.2018, despite the request of the counsel for adjournment, it may be necessary to recapitulate the facts.

13 Copies of relied upon documents under Section 207 Cr.P.C. were furnished to the accused on 18.06.2018. The accused had engaged Mr.Johnson as his counsel. Charges were framed on 30.07.2018. Though the final report has been laid for the offence under Section 10 of the POCSO Act, the Trial Judge has gone through the final report and the accompanying documents and has framed a charge under Section 6 of the POCSO Act, which itself shows that the Trial Judge has applied her

mind to the facts of the case by going through the records and only thereafter, she has framed the appropriate charges. In other words, the Trial Judge has not mechanically replicated the final report averments and framed the charges as opined by the Investigating Officer therein. After framing the charges, the trial calendar was fixed to 20.08.2018. To say in other words, the accused had 20 days time from 30.07.2018 (the date on which charges were framed by the Trial Court) to 20.08.2018 (date on which examination of P.Ws. took place) for preparing his defence.

14 At this juncture, Section 35 of the POCSO Act is profitably extracted hereunder:

"35. Period for recording of evidence of child and disposal of case:

(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

15 From a reading of the aforesaid provision, it is clear that there is a statutory mandate for the Trial Court to record the evidence of the child within thirty days of taking cognizance. Knowing full well that the witnesses are going to appear on 20.08.2018, the accused had abstained from appearing before the Trial Court by contending that he had fallen sick. M/s.Jeyakumar and Selvi George entered appearance and have filed an application under Section 317 Cr.P.C. for dispensing with the personal appearance of the accused.

16 In the remarks given by the Trial Judge, she has stated as follows:

"On 20.08.2018, when the case was posted for examination of witnesses, 3 witnesses including the victim child were present. On that day, a petition u/s 317 Cr.P.C. was filed by the counsel for the accused in order to condone the absence of the accused. As three witnesses including the victim child of 11 years were present for examination on the said day, the petition u/s 317 was allowed on the condition that the accused should not dispute the point of identity at any time later. The witnesses have been examined as P.W.1 to 3. Though Section 317 petition was allowed on such condition, when the victim child was examined, she was shown with the photograph of the accused and she identified the accused by seeing his photo. And the same was recorded in the evidence also."

17 Thus, the Trial Judge has allowed the petition under Section 317 Cr.P.C. on condition that the accused should not dispute his identity later on. The accused has completely suppressed this aspect in the transfer application. In such perspective of the matter, this Court has no incertitude in holding that the Trial Judge was perfectly justified in dispensing with the personal appearance of the accused, on condition that he cannot take advantage of his absence and contend that the witness had not identified him.

18 The next question that emerges for consideration is whether the Trial Judge should adjourn the case and send back the witnesses on the ground that the accused had changed his counsel. The answer to this question lies in provisos to Section 309 Cr.P.C. which are usefully extracted below:

"309 Power to postpone or adjourn proceedings:

Provided also that--

"a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

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

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

19 The aforesaid amendments were brought into the Code by the Amendment Act 5 of 2009. A reading of the above provisions clearly shows that even if the counsel is engaged in another Court, that cannot be a ground for adjournment. In fact, the law mandates that the Trial Court can proceed to record the statement if the pleader is not present or though present in the Court, is not ready to examine-in-chief or cross. This means that even if the Public Prosecutor does not examine a witness who is present in the Court, the Court can proceed to record the statement of the witness dispensing with the examination-in-chief or cross-examination. All these amendments were brought pursuant to the recommendations of the Law Commission which noted the various strategies adopted by the defence to protract the criminal trials in this country. In the teeth of these legal provisions, the Trial Judge had no other alternative, but, to proceed with the examination of the three witnesses.

20 The Trial Judge has further stated in her remarks as under:

"In her case, the victim child was below 12 years and she was a school going child. In order to accommodate the deponent to do the cross-examination on the same day, after examining the victim child, the case was passed over, before examining the other witnesses. The deponent has stated in her affidavit that the victim child was examined in the afternoon session. This is only with a view to accommodate the deponent to do the cross-examination of the witnesses on the same day. But, the deponent did not prefer to make use of the opportunity and cross-examine the victim child or the other witnesses. She went on making the same representation repeatedly by consuming much of this Court's time. At no point, the learned counsel had filed any petition to defer the cross. But, she was asking many mentioning by interrupting the proceedings in order to make the very same request repeatedly. In the circumstances of the case, the cross of P.W.1 to 3 could not be deferred and the case was posted to 17.09.2018 for examination of further witnesses."

21 Mrs. Selvi George, learned counsel for the accused, in her affidavit, has stated that she made an oral request for deferment of the cross-examination, which was not acceded to. Where two witnesses are to speak about the same fact, then, the law provides for deferring the cross-examination of one witness, until the other is examined. For example, in trap cases, the complainant and the decoy witness will speak about the same facts and the Courts will normally defer cross-examination of one, until the other is examined. In this case, the allegation against the accused is that he had taken the child to the third floor of the school and had sexually abused her. She is the solitary witness in this case. Her parents came into the picture only thereafter. Therefore, there is no question of deferring the cross-examination on the mere oral request that is supposed to have been made by the learned counsel for the accused.

22 The accused and her counsel have made a serious allegation against the Trial Judge by contending that she did not show any photograph to the victim during examination-in-chief on 20.08.2018, however, she has recorded so in the deposition. They have also alleged that when they asked the Trial Judge to furnish a certified copy of the audio and video recording of the evidence of the victim girl, the Trial Judge refused to give it.

23 This Court played the video clippings of the examination of the victim child and found that the allegations made in the affidavits that no photo was shown to the victim girl are patently false. We should bear in mind that on 20.08.2018, the accused absented himself. The video clipping

shows the Trial Judge casually engaging in a conversation with the child and just showing a photograph and asking the child, if she knows the person in that. What else can a Trial Judge do in a situation when the accused does not come to the Court knowing full well that the victim girl is going to be examined? Of course, the Trial Judge could have dismissed the Section 317 Cr.P.C. petition, issued warrant to arrest the accused and proceed further with the trial after placing the accused in judicial custody under Section 309 Cr.P.C., which she did not do. Therefore, this Court strongly places on record its disapproval and deprecates the insinuation made by the accused, supported by the counsel that the Trial Judge has interpolated in the deposition of the victim girl, as if the photograph was shown, when actually, it was not. This Court places on record its appreciation to the friendly manner in which the Trial Judge handled the child victim, as could be seen from the video clipping. This audio-video clipping was played to Mrs. Selvi George, so that she is satisfied that a reckless allegation has been made against the Trial Judge. If the audio and video recording of the evidence of child is given to the accused, it will find its way to the social media and the future of the child will be doomed. The POCSO Act prohibits even disclosure of the identity of the child victim and therefore, the petitioner's request to issue a copy of the audio and video recording of the evidence of the child, was rightly turned down by the Trial Court.

24 Now, coming to the allegation made against the Trial Judge with regard to the incident that transpired on 07.09.2018, the remarks of the Trial Judge are extracted verbatim:

"Subsequently, an application u/s 311 Cr.P.C. was filed on 04.09.2018 to recall P.W.1 to P.W.3. After the said petition was numbered as Cr.M.P. No.15180 of 2018 and it was posted to 07.09.2018. The Special Public Prosecutor filed her counter on 07.09.2018. After receiving the counter and on perusing the pleadings of both the parties, an order was passed in the said petition in the presence of the junior counsel for the accused. At that time, he did not produce the alleged citation of the Supreme Court for judicial notice. The petition u/s 311 Cr.P.C. was allowed partly to recall P.W.2 and P.W.3 on cost and it was partly dismissed as against recalling of P.W.1, who is the victim child. After the order was passed, the said junior counsel wanted the case to be passed over by stating that his senior counsel wanted to come and argue. Since orders have been passed already, he was informed that it cannot be done and he was further informed about the order also. After the petition was disposed and proceedings in the said matter was over, two of the counsels, namely, Tmt. Selvi George (the deponent herein) and Thiru. Jeya

Kumar came to the Court and represented that they wanted to argue on the said petition.

They were raising their voices in such a fashion that it did not allow the voice of the Court heard. In fact, they were not in a mood to listen when it was told by the Court that the petitions under Sec.311 are miscellaneous petitions and they can be disposed summarily. The deponent was making mockery by distortion that this Court told that the case is a summary case and the Cr.P.C. is not applicable. She had repeated such mocking statement in her affidavit filed before the Hon'ble High Court also. When an order was passed in a petition filed u/s 311 Cr.P.C., it is meaningless to state that the Court had stated that Cr.P.C. is not applicable. Despite knowing well that once an order is passed by a Court, it has to be challenged before the appropriate forum, the counsels were raising their voices, just to the attention of everyone. The tone and tenor of the counsels were not like regular representations made before the Court. But it was of such a nature that it should cause intimidation or nervousness in the mind of the Court in order to get some advantage in a case which is governed by a stringent Act."

The contention of the petitioner that the Trial Judge told him that the provisions of the Code of Criminal Procedure will not apply and that the proceedings before a Special Court is a summary proceedings, is unacceptable to this Court, in the light of the aforesaid explanation given by the Trial Judge, wherein, she has stated that she told the counsel that an application under Section 311 Cr.P.C. is a summary proceedings and that she had not told the counsel that the entire prosecution is a summary procedure. It may be relevant to state here that on 07.09.2018, the main case was not heard and only the Miscellaneous Petition under Section 311 Cr.P.C. was heard. Therefore, the insinuation made against the Trial Judge stands falsified. It is worth pointing out that, the Trial Judge has partly allowed the recall petition and has recalled P.Ws.2 and 3.

25 Mrs. Selvi George, learned counsel for the petitioner placed strong reliance on the following paragraph from the judgment of this Court in Ramesh vs. State [1989 LW (Crl.) 46]:

"11. In a criminal case, it is not enough that justice is done, but, what is more important is that parties must feel that justice has been done. Even if the apprehension of the petitioner may at the first blush seem to be rather foolish, if the Court holds that it could be real and genuine, especially when the prosecution relates to a capital case, it will be in the interests of justice, to order transfer."

26 One can have no two opinions on the above statement of law. However, the above statement of law cannot be read in void, but, must be read in the context in which it was rendered. In the aforesaid case relied on by the learned counsel for the petitioner, the Sessions Judge who was dealing with a case under Section 302 read with Section 120-B IPC, heard the arguments of the defence counsel with regard to framing of charges and dismissed the same on the same day by a lengthy order, which reflects that he had formed an opinion about the guilt of the accused therein. The above proposition of law cannot be used as a thumb rule in all cases since judgment of a Court cannot be read as Euclid's theorem. This Court has considered every allegation made in the transfer application and has found that the allegations are not worthy of acceptance. Hence, CrI.O.P.No.22234 of 2018 seeking transfer of case is liable to be dismissed.

27 Coming to CrI.O.P. No.23209 of 2018 seeking to recall P.W.1 under Section 311 Cr.P.C., the Trial Court has relied upon Section 33(5) of the POCSO Act to deny the petitioner's request. At this juncture, it may be necessary to extract Section 33(5) of the POCSO Act as under:

"33 Procedure and powers of Special Court:

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

28 Mrs. Selvi George, relying on Collins Dictionary, submitted that the expression "repeatedly" means recalling "again and again" and would not mean recalling once. This Court is unable to persuade itself to agree with the said submission, because, the context in which the word "repeatedly" has been used in Section 33(5) of the POCSO Act has to be understood in toto, for which, it may be necessary to extract Section 33(1) to 33(6) verbatim:

"33 Procedure and powers of Special Court:

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall, in turn, put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the Court.

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

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial."

29 The above provision mandates that the child should be examined in a child-friendly atmosphere and the examination should be done by a questionnaire method. The trauma suffered by a victim of sexual abuse would tend to shatter her very personality which would linger on throughout her life time. This is exactly what we witnessed in Judge Brett Kavanaugh case, when Dr. Blasey Ford testified before the U.S.Senate about the trauma she suffered after she was sexually assaulted 30 years ago. Of course, that the Senate cleared the appointment 50:48, is a different issue.

30 The POCSO Act deals with children who will have to carry the scars of the abuse in their psyche from a very tender age to tomb. The society should take steps to help the child to forget the trauma before it solidifies and permanently settles in her psyche, because, such a traumatic experience is capable of sowing criminal propensities in the future, thereby, making the child a future offender.

31 If Mrs. Selvi George's argument is to be accepted, then, Section 33(5) of the POCSO Act would have no meaning at all and it will become a statutory right for the accused to say that he will not cross-examine the witness on the day she is examined-in-chief and that he would cross-examine her only on another day. This will go clearly against the law laid down by the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220], wherein, the Supreme Court has clearly held that a witness should be cross-examined on the date he/she is examined-in-chief.

32 Though this Court does not find any force in the aforesaid arguments advanced by the learned counsel for the petitioner, yet, this Court is of the view that interests of justice would be sub-served, if one more opportunity is given to the petitioner to cross-examine P.W.1, in the peculiar facts and circumstances of this case and also taking into

consideration the fact that the petitioner had filed the recall petition on 05.09.2018, much before the next date of hearing, of course on the following conditions:

- The accused shall deposit a sum of Rs.5,000/- as costs within a period of one week from the date of receipt of a copy of this order to the credit of S.C. No.163 of 2018 on the file of the Trial Court and on such deposit, the Trial Court shall recall the victim girl, P.W.1. This sum shall be paid to the mother of the victim girl.
- The Trial Court shall ensure that the safeguards contemplated in Sakshi vs. Union of India and others [(2004) 5 SCC 518] under which the victim cannot be seen by the accused and the victim can see the accused, are complied with.
- The accused shall give a questionnaire to the Trial Judge, who, in turn, shall put the same to the victim girl as provided under Section 33(2) of the POCSO Act. On the date when the victim girl appears, if the accused does not appear, the accused will forfeit his right of further recalling her.

In the ultimate analysis, CrI.O.P. No.22234 of 2018 stands dismissed and CrI.O.P. No.23209 of 2018 stands allowed in the above terms. Connected CrI.M.Ps. are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Inspector of Police
W7, All Women Police Station
Anna Nagar, Chennai
- 2 The Sessions Judge, Mahila Court, Chennai 600 104
- 3 The Public Prosecutor
High Court of Madras, Chennai 600 104.
- + 4 ccs to Ms.Selvi George, Advocate Sr.71205 & 71206

CrI.O.P. No.22234 & 23209 of 2018