

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.18231 of 2018

and

Crl.MP.No.9553 of 2018

R.Balaji

... Petitioner

Vs

State of Tamil Nadu
Represented by the Inspector of Police
W8 All Women Police Station
Thirumangalam, Chennai.

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 12.06.2018 made in S.C.No.277 of 2017 on the file of the Court of Sessions Judge, Mahila Court, Chennai, insofar as disallowing the prayer to recall material witnesses namely P.W.2 (victim) for cross examination and L.W.8 (learned Judicial Magistrate) subject to examination.

For Petitioner	:	Mr.N.S.Sivakumar
For Respondent	:	Mr.C.Raghavan Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 12.06.2018 made in S.C.No.277 of 2017 on the file of the Court of Sessions Judge, Mahila Court, Chennai, insofar as disallowing the prayer to recall the material witnesses namely P.W.2 (victim) for cross examination and L.W.8 (learned Judicial Magistrate) subject to examination.

2. Today, Mrs.A.Vimala Selva Rani, WHC 35855, W8, All Women Police Station, Thirumangalam, Chennai-600 101, is present before this Court.

3. The petitioner is facing a prosecution in S.C.No.277 of 2017 for the offence under Section 6 of the Protection of Child from Sexual Offences Act, 2012, (for short "the POCSO Act") before the Mahila Court, Chennai. After the charges were

framed, the prosecution began examination of their witnesses. The prosecution examined PW1 to PW6, including the victim girl/PW2 on 19.03.2018. The accused did not cross-examine PW1 to PW6. Thereafter, the accused filed CrI.MP.No.8442 of 2018 in S.C.No.277 of 2017 under Section 311 Cr.P.C. for recalling PW1 to PW6, which has been partly allowed by the trial Court. The trial Court has permitted to recall PW1, PW3, PW4, PW5 and PW6, but has rejected the request to recall PW2 and LW8. Challenging the said portion of the order, the accused is before this Court.

4. Heard the learned counsel for the accused and the learned Government Advocate (CrI. Side).

5. In the petition filed by the accused under Section 311 Cr.P.C., he has stated that since the Senior Counsel was hospitalized, the cross-examination of the witnesses was not done on 19.03.2018. In this case, the witnesses were examined on 19.03.2018 and the petition under Section 311 Cr.P.C has been filed only on 29.05.2018, which is two months after the examination of the witnesses. The trial Court was right in rejecting the request of the accused to recall the victim girl/PW2 in the light of Section 33(5) of the POCSO Act. That apart, the reason given by the accused that his counsel was hospitalized cannot be countenanced.

6. When this Court was about to dismiss this petition, the learned counsel for the accused submitted that the accused is ready and willing to marry the victim girl/PW2. He further took this Court through the chief-examination of the victim girl/PW2, wherein, she has stated that she was in love with the accused and that she insisted the accused to marry her and she voluntarily had physical relationship with him. Of course, when the victim girl is a minor girl, the question of voluntary sex does not arise. However, when the accused is ready and willing to marry the victim girl/PW2, this Court is of the view that the interests of justice will be served, if an opportunity is given to the accused to cross-examine the victim girl/PW2 in the peculiar facts and circumstance of this case. As regards the request of the accused to recall LW8, the same cannot be permitted.

6. In the result, this Court directs the trial Court to summon the victim girl/PW2 on a particular day and on that day, the accused shall cross-examine the victim girl. Boycott of Courts cannot be stated as a reason for not cross-examining the victim girl, when she appears. The accused shall pay a costs of Rs.2,000/- (Rupees Two Thousand Only) to the victim girl/PW2, when she comes to the witness box for giving evidence.

With the above direction, this petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

mk

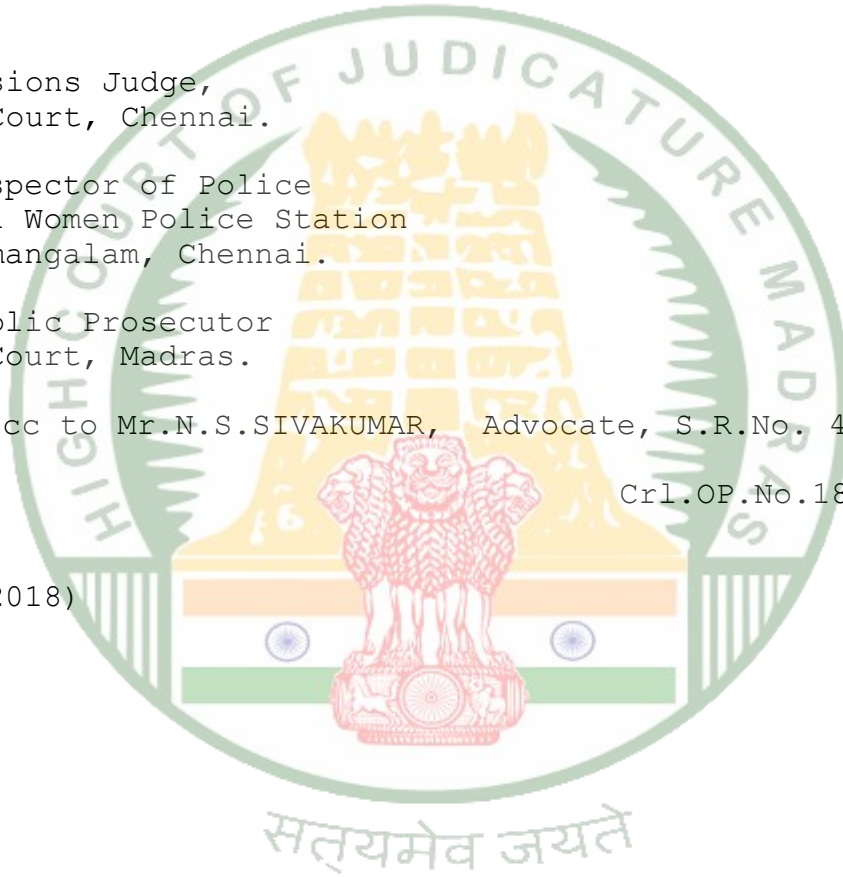
To

1. The Sessions Judge,
Mahila Court, Chennai.
2. The Inspector of Police
W8 All Women Police Station
Thirumangalam, Chennai.
3. The Public Prosecutor
High Court, Madras.

+lcc to Mr.N.S.SIVAKUMAR, Advocate, S.R.No. 47996

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SPD(CO)
TR(26/07/2018)



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