

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.OP.No.25890 of 2018

and

Crl.MP.No.14839 of 2018

Kamal Basha @ Bharmha Kamal ... Petitioner / Accused

Vs.

The State represented by
Inspector of Police,
All Women Police Station,
Perambalur. ... Respondent / Complainant

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 05.10.2018 in Crl.M.P.No.463 of 2018 in S.C.No.15 of 2018 on the file of the Learned Mahila Court, Perambalur and consequentially recall the evidence of PW1 to PW3.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, rejecting the application filed by the petitioner under Section 311 of Criminal Procedure Code, to recall and further cross examine PW1 to PW3.

2. It is seen from the records that the petitioner is facing trial before the Special Court for an offence under Sections 342, 363, 345D(i), 506(1) and Section 5(m) r/w Section 6 of POCSO Act 2012.

3. The prosecution has examined 12 witnesses in this case and the petitioner has also cross examined those witnesses.

4. The petitioner wanted to further cross examine PW1 to PW3 and therefore, he filed application before the Court below, but, the Court below dismissed the same by an order dated 05.10.2018.

5. A perusal of the order passed by the Court below, shows that the Court below was concerned about the fact that two of the witnesses are child witnesses and there is a possibility that there will be unnecessary delay in the disposal of the case and there is a chance of forcing the witnesses change their version.

6. The learned counsel for the petitioner would submit that the entire complaint given against the petitioner is false. Further, he would submit that there was actually a landlord tenant dispute between the parties and false complaint was given against the petitioner in order to evict him from the property.

7. The learned counsel for the petitioner would further submit that the petitioner never attempted to protract the proceedings and he has actively participated in the proceedings by cross examining the witnesses. Therefore, the learned counsel for the petitioner would submit that one last opportunity can be given to the petitioner to recall and cross examine PW1 to PW3.

8. The learned Additional Government Advocate would submit that the petitioner has sufficiently cross examined the witnesses and therefore, there is no requirement for the petitioner to recall the witnesses and further cross examine them.

9. The learned Government Advocate would also submit that there is a bar under the Act under Section 33(5), to the Special Court to ensure that the child is not called repeatedly to testify before the Court. Therefore, the learned Government Advocate would submit that there are no merits in the petition and the same is liable to be dismissed by this Court.

10. This Court has carefully considered the submissions made on either side.

11. The petitioner is admittedly facing trial before the Special Court for serious charges against him.

12. The POCSO Act cast heavy burden on an accused person under Sections 29 and 30 of the Act, since there is a legal presumption with regard to commission of the offences and the mental state against the accused persons.

Therefore, the accused person must be given a fair opportunity to defend himself in a case of this nature. While doing so, this Court must also ensure that the child witnesses are not unnecessarily exposed before the Court repeatedly to testify.

13. The nature of defence that has been projected by the petitioner does not require further cross examination of PW2 and PW3. These witnesses are admittedly child witnesses and they cannot talk about the pending landlord tenant dispute between the parties. That apart, the petitioner has already cross examined these witnesses elaborately. Therefore, in view of the bar under Section 33 (5) of the Act and also the facts and circumstances of the case, there is no requirement to recall and further cross examine PW2 and PW3.

14. However, this Court is of the considered view that one last opportunity can be given to the petitioner to recall and cross examine PW1. Therefore, the order passed by the Court below is partly set aside insofar as PW1 is concerned. The Court below is directed to issue summons to PW1 and fix a date for cross examination. On the date when PW1 appears before the Court, the learned counsel for the petitioner shall cross examine PW1 on the same day. If for any reasons, the petitioner fails to cross examine PW1 on the day when she appears, the petitioner shall forfeit his right to cross examine PW1 in future. Further, the petitioner shall pay a cost of Rs.500/- to PW1, when she appears before the Court for cross examination.

15. Accordingly, this Criminal Original Petition is partly allowed to the extent indicated herein. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS)

//True Copy//

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Sub Assistant Registrar

To
The Inspector of Police,
All Women Police Station,
Perambalur.

+1cc to Mr. S.Kingston, Advocate SR.No. 77792

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ASK(16/11/2018)