

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27087 of 2018

Sivapriyan

.. Petitioner

Vs.

State Rep. By,
The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai.
Crime No.850 of 2013

.. Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the order in Crl.M.P.No.4948 of 2018 in S.C.No.46 of 2017 dated 23.03.2018 passed by the Mahila Court, Chennai and set aside the same.

For Petitioner : Mr.A.Balamurugan

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 in Crl.M.P.No.4948 of 2018 dated 23.03.2018 wherein, the petition filed by the petitioner under Section 311 IPC, seeking to recall PW1 to PW6 for the purpose of cross examination was partly allowed and the petitioner was permitted to recall and cross examine PW2 to PW6 and the petition was dismissed in so far as PW1 is concerned. Aggrieved by the same, the present petition has been filed before this Court.

2. The petitioner is facing trial before the Court below for an offence under Sections 363, 366 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. It is the specific case of the petitioner that he married PW1 and was living with her for nearly two years. Thereafter, a complaint has been given against this petitioner as if he has committed an offence under Protection of Children from Sexual Offences Act, 2012.

3. The learned Counsel for the petitioner would submit that recalling PW1 becomes very important for the petitioner, since the entire defence of the petitioner hinges upon the statement going to be made by PW1 in the course of her cross examination. The learned Counsel would further submit that one last opportunity can be given to the petitioner in order to cross examine PW1.

4. The learned Additional Public Prosecutor would submit that the Court below has taken into consideration, the entire facts and circumstances of the case and has allowed the petition in so far as PW2 to PW6 are concerned. The Court below has dismissed, in so far as PW1 is concerned only on the ground that she is the victim of the sexual offence and therefore, she should not be made to face the ordeal of being called again and again before the Court. The learned Additional Public Prosecutor would further submit that there are absolutely no grounds to interfere with the order passed by the Court below.

5. This Court has carefully considered the submissions made on either side and also the order passed by the Court below.

6. The petitioner is facing trial for the offence under Sections 363, 366 IPC and also under Protection of Children from Sexual Offences Act, 2012. In view of Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012, the burden heavily falls on the petitioner to rebut the presumption. The petitioner has lived with the victim for a period of two years. Therefore, this Court, on the peculiar facts and circumstances of this case, is of the considered view that one last opportunity can be given to the petitioner to recall PW1 for cross examination.

7. Hence, the order passed by the Court below in CrI.M.P.No.4948 of 2018 in S.C.No.46 of 2017 dated 23.03.2018 is hereby set aside. The Court below is directed to fix a date for the appearance of PW1. The learned Counsel representing the petitioner shall cross examine the PW1 on the same day, when she appears before the Court. If for any reason, the petitioner fails to cross examine the PW1 on the day when she appears, the petitioner shall forfeit his right to cross examine the PW1 in future.

8. In the result, this Criminal Original Petition is allowed. The Court below is directed to complete the proceedings within a

period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

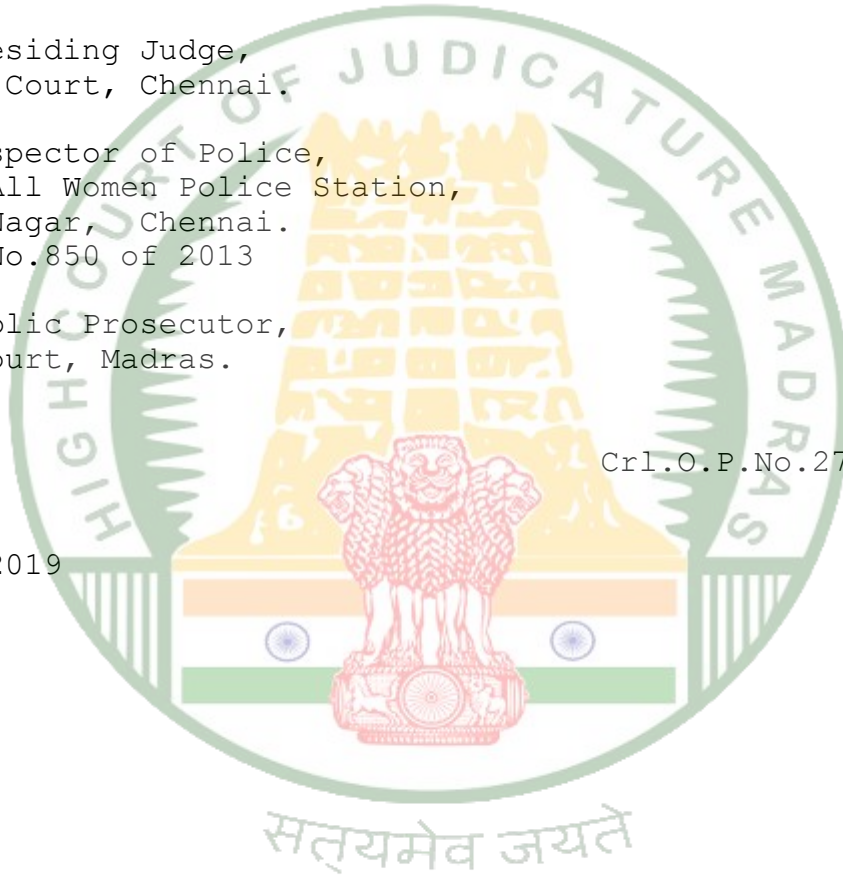
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To

1. The Presiding Judge,
Mahila Court, Chennai.
2. The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai.
Crime No.850 of 2013
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.27087 of 2018

RGN(CO)
CS/09/01/2019



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