

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28588 of 2018

Ashok Kumar

.. Petitioner/Accused

vs.

State by

The Inspector of Police,
Thiruporur Police Station,
Chengalpattu.

...Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to call for the records and set aside the order dated 12.10.2018 in C.M.P.NO.1889 of 2018 in SPL.CC.No.13 of 2018 on the file of the Session Judge, Mahil Court, Chengalpattu District.

For Petitioner : Mr.K.Sudhan

For Respondents : Mr.C.Raghavan
Government Advocate (Crl.Side)

O R D E R

This petition has been filed against the dismissal of the application filed by the petitioner/accused under Section 311 of Cr.P.C.

2.The petitioner is facing trial before the Court below for an offence under Section 6 R/W 5 POCSO Act and 302 of IPC.

3.The petitioner filed an application before the Court below seeking to recall PW1 and PW4 for further cross examination. This petition was filed based on the fact that the Investigating Officer, who was examined before the court, has given a complete different version about the incident which goes completely contrary to the evidence of PW1 and PW4. Therefore, the petitioner wanted to recall PW1 and PW4, in order to substantiate the contradictions.

4.The Court below has dismissed the petition mainly on

the ground that PW.1 and PW4 have already been cross-examined by this petitioner. That apart, the petitioner has already been questioned under Section 313 Cr.P.C and the case has reached the stage of defence evidence. Therefore, the Court below relying upon the Judgment of AG v. Shiv Kumar Yadav and another in CrI.Appeal Nos.1187-1188 of 2015, of the decision the Hon'ble Supreme Court, came to a conclusion that in a case involving POCSO, the Court must be careful before recalling the witnesses. The Court below has categorically come to a conclusion that recalling of PW.1 and PW.4, will only cause serious prejudice to the interest of the minor victim and no ground has been made out by the petitioner to recall PW.1 and PW.4.

5.The learned counsel for the petitioner would submit that the petitioner is facing trial for very serious charges under POCSO Act. Therefore, the petitioner has to be given sufficient opportunity to recall the witnesses since the petitioner has to rebut the presumption against him under Sections 29 and 30 of the POCSO Act.

6.From the above, it is clear that PW1 and PW4 have already been cross- examined by the petitioner. If the petitioner finds contradiction between the evidence of the investigating officer on the one hand and PW.1 and PW.4 on the other hand, the petitioner has to only point out the same in the course of final arguments. This is not a ground for recalling of PW1 and PW4. The Court below has applied his mind and has given cogent reasons for dismissing the application filed by the petitioner for recalling the witness.

7. This Court does not find any illegality or infirmity in the order passed by the Court below. This Court does find any ground to interfere with the order passed by the Court below.

8.In the result, this criminal original petition is dismissed and the Court below is directed to complete the proceedings within a period of one month from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

stm

To

1.The Inspector of Police,
Thiruporur Police Station,
Chengalpattu.

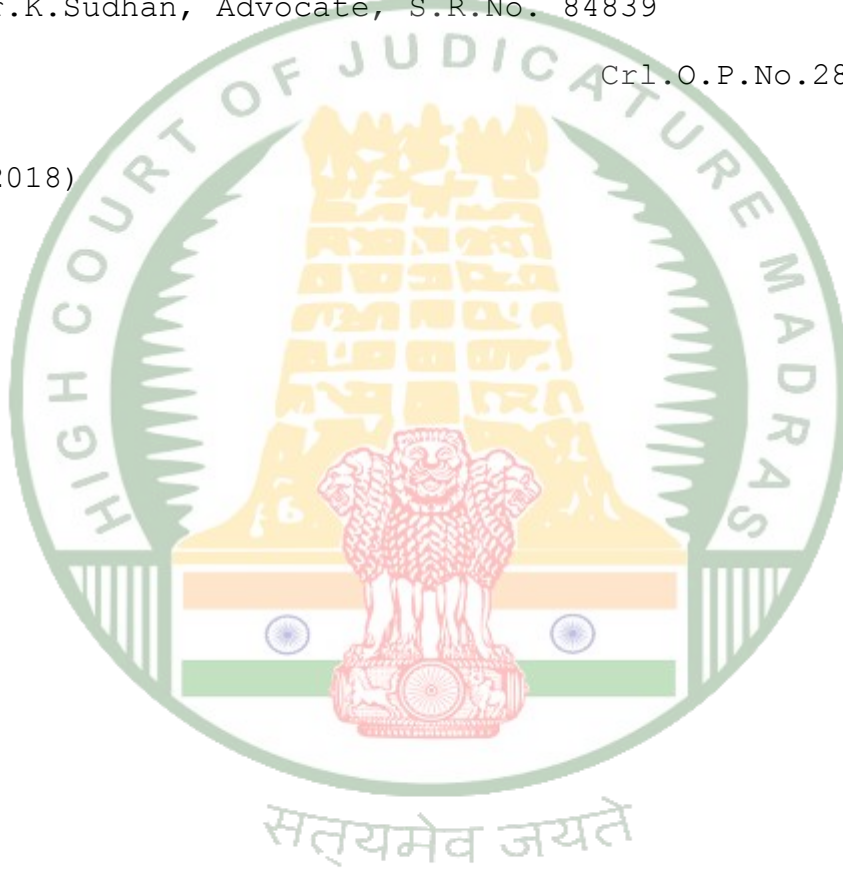
2.The Session Judge, Mahil Court,
Chengalpattu District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Sudhan, Advocate, S.R.No. 84839

Crl.O.P.No.28588 of 2018

SR(CO)
GN(24/12/2018)



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