

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.27972 of 2018

and

CRL.M.P.No.16241 of 2018

1.Balakrishnan,
2.Chinna Marimuthu

... Petitioner

Vs.

State by
The Inspector of Police,
All Women Police Station,
Kangayam,
Tiruppur District
(Crime No.12 of 2015)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.642 of 2018 in Spl.S.C.No.14 of 2016 on the file of the Sessions Judge, Magalir Neethimandram, Tiruppur, dated 19.11.2018.

For Petitioner : Mr. B.Kumarasamy
For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 311 of Cr.P.C. to recall P.Ws.1 and 3 for cross examination.

2. The petitioner is facing trial before the Court below for an offence under Section 363 IPC and Section 5(1)(n) r/w 6, 16 r/w 17 of POCSO Act 2012.

3. The prosecution witnesses have been examined and it has been closed and now the case is at the stage of final hearing.

4. P.Ws.1 and 3 are the victim and her brother. Both of them belong to Calcutta. These witnesses were examined on 03.09.2018. Thereafter, inspite of several opportunities, the counsel for the petitioner did not choose to cross examine these witnesses. Ultimately, the counsel representing the petitioner also reported that there is no cross examination for those witnesses. Having taken such a stand, the petitioner has thereafter changed the counsel and has filed the petition under Section 311 of Cr.P.C during the month of October 2018, to recall P.Ws.1 and 3 for cross examination.

5. The Court below after considering the facts of the case, gave a categorical finding that inspite of sufficient opportunity given to the petitioner to cross examine P.Ws.1 and 3, he has failed to do so and the Court below also recorded the finding that the counsel representing the petitioner has specifically stated no cross examination before the Court. The Court below also took note of the law under Section 33(5) of the POCSO Act, which mandates that the child shall not be called repeatedly to testify in the Court. The Court also took note of the circular in ROC.No.71659-A/2018/POCSO issued by the Hon'ble High Court, Madras, dated 11.10.2018. The Court did not find any satisfactory reason to allow the petition filed by the petitioner seeking to recall P.Ws.1 and 3 for cross examination.

6. The learned counsel for the petitioner would submit that one last opportunity may be given to the petitioner to cross examine P.Ws.1 and 3. The learned counsel for the petitioner would submit that the victim in this case is aged about 17 years and no prejudice will be caused if the victim is recalled for cross examination. The learned counsel would further submit that for the mistake committed by the counsel, the petitioner should not be penalised. The petitioner has also changed this counsel and he now wants to conduct the proceedings effectively.

7. This Court has carefully considered that the submissions made by the learned counsel for the petitioner. This Court is not able to find any illegality and infirmity in the order passed by the Court below. The Court below has taken into consideration, the entire facts of the case and has given sufficient reasons to dismiss the petition. Just because the petitioner has changed the counsel, that does not give a cause of action for recalling the witness for the purpose of cross examination. Useful reference can be made to the Judgment of the Hon'ble Supreme Court reported in (2017) 1 MLJ (Cr1) 437 (SC) [State of Haryana Versus Ram Mehar and Others Etc.] This Court does not find any ground to interfere with the order passed by the Court below.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

lpp/vsa

To

1.The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court)Tiruppur.

2.The Inspector of Police,
All Women Police Station,
Kangayam,
Tiruppur District

3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Gunalan, Advocate sr.no.83141

CRL.O.P.No.27972 of 2018
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nr 20/12/2018

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