

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28587 of 2018

Gokul

.. Petitioner

Vs.

State by Inspector of Police,
Uthukuli Police Station,
Tirupur.
(Crime No.337 of 2017)

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 14.11.2018 made in Crl.M.P.No.667 of 2018 in Spl.S.C.No.38 of 2017 on the file of the Learned Magalir Neethimandram at Tiruppur.

For Petitioner : Mr.J.Franklin

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

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C.

2.This petition was filed before the Court below seeking for recalling PW.1 for further cross-examination. The Court below has dismissed the petition by giving a specific finding that PW.1 has already been elaborately cross-examined on the side of the petitioner.

3.The petitioner is facing a trial for an offence under Sections 366 (A) IPC and Sec 5(1) r/w 6 of the POCSO Act. The prosecution had already examined 6 witnesses and all these witnesses have been cross-examined. At this stage, the present petition came to be filed seeking for recalling PW.1 for further cross-examination.

4.It is seen from the records that PW.1 has been sufficiently cross-examined by the petitioner. Now the petitioner seeking to recall PW.1 only on the ground that PW.4 and PW6 have stated in their evidence that PW.1 was forcibly married with the 3rd party and PW.1 was not interested in the said marriage.

5.This cannot be a ground for the petitioner to recall and cross-examine for PW.1. It is always open to the petitioner to establish the contradictions in the evidence of the witnesses and thereby strengthen his defence. The petitioner cannot use the evidence of PW.4 and PW.6 and with that contradict or collect any further evidence from PW.1. This cannot be permitted by filing a petition under Section 311 Cr.P.C. That apart, it is seen that PW.1 was a minor and Sec 33(5) of the Act specifically bars the victim from being repeatedly called for examination before the Court.

6.This Court is not able to see any illegality or infirmity in the order passed by the Court below. There are absolutely no grounds to interfere with the order passed by the Court below.

7.In the result this criminal original petition is dismissed with a direction to the Court below to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

stm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police
Uthukuli Police Station,
Tirupur.
- 2.The Magalir Neethimandram,
Tiruppur.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.28587 of 2018

cp(co)
kak(10/01/2019)