



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :27.02.2018

ORDER PRONOUNCED ON :01.03.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P. (MD) Nos.13900 and 13974 of 2017

and

Cr1.M.P. (MD) .Nos.9340 and 9370 of 2017

Murugan

... Petitioner/Sole Accused
in both Cr1.O.Ps

-Vs-

State rep. Through the Inspector of Police,
Thallakulam,
All Women Police Station,
Madurai.

(In Cr.No.22 of 2015)

... Respondent/Complainant
in both Cr1.O.Ps

PRAYER in Cr1.O.P. (MD) .No.13900 of 2017: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in Cr.M.P.No.1763 of 2016 in Special S.C.No.31 of 2015, dated 19.09.2017 and set aside the same as illegal.

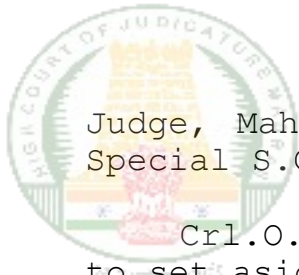
PRAYER in Cr1.O.P. (MD) .No.13974 of 2017: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in Cr.M.P.No.507 of 2017 in Special S.C.No.31 of 2015, dated 19.09.2017 and set aside the same as illegal.

For Petitioners : Mr.S.M.A.Jinnah

For Respondent : Mr.Prabhu Ramachandran

Government Advocate (Cr1. Side)

COMMON ORDER



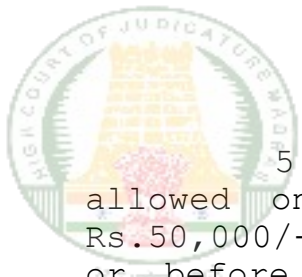
Judge, Mahalir Neethimandram, Madurai in Cr.M.P.No.1763 of 2016 in Special S.C.No.31 of 2015, dated 19.09.2017.

Crl.O.P.(MD).No.13974 of 2017 has been filed by the petitioner to set aside the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in Cr.M.P.No.507 of 2017 in Special S.C.No.31 of 2015, dated 19.09.2017.

2. The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial for the offences under Sections 3(m), 6 r/w 18 of Protection of Children from Sexual Offences Act in S.C.No.31 of 2015 on the file of the Sessions Judge, Mahalir Neethimandram, Madurai. He further submitted that in the aforesaid case, the prosecution has examined P.Ws.1 to 12 in chief on various dates and on those dates, the advocate, who was appearing for the petitioner was in out-station and hence, the said witnesses were not cross-examined on the same day and hence, the petitioner has filed two applications under Section 311 Cr.P.C, one for recalling P.Ws.1 to 9 and another for recalling P.Ws.10 to 12 for cross-examination. But the trial court, without considering the petitioner's request, has dismissed those applications. He further submitted that the petitioner is facing severe charges and hence, he may be given a chance to cross-examine those witnesses.

3. The learned Government Advocate (Crl.side) has submitted that P.Ws.1 & 2 were examined in chief on 02.06.2016; P.Ws.3 & 4 were examined in chief on 09.09.2016; P.W.5 was examined in chief on 30.09.2016; P.Ws.6 & 7 were examined in chief on 26.10.2016; P.Ws.8 & 9 were examined in chief on 21.11.2016 and P.Ws.10 to 12 were examined in chief on 03.01.2017. He further submitted that P.W.2 is the victim girl and she is aged about 9 years and she cannot be called repeatedly for examination before the Court and taking into consideration of all the aforesaid facts, the trial court has dismissed the applications, which were filed by the petitioner herein to recall the aforesaid witnesses.

4.A perusal of the orders passed by the trial court shows that P.Ws.1 & 2 were examined in chief on 02.06.2016; P.Ws.3 & 4 were examined in chief on 09.09.2016; P.W.5 was examined in chief on 30.09.2016; P.Ws.6 & 7 were examined in chief on 26.10.2016; P.Ws.8 & 9 were examined in chief on 21.11.2016 and P.Ws.10 to 12 were examined in chief on 03.01.2017. The only reason given by the petitioner for not cross-examining those witnesses on the dates, when they were examined in chief is his counsel was held up in out-station. Even it is assumed that the petitioner's counsel was in out-station, on those dates, the petitioner should have filed a petition to recall the aforesaid witnesses within the reasonable time. But, he has filed petitions after several months and for that, he has not given any explanation. However, taking into consideration, the petitioner is facing severe charges, in order to give an opportunity to him to cross-examine those witnesses, this Court is inclined to allow these petitions by imposing conditions:



5. In the result, these Criminal Original Petitions will be allowed on a condition that the petitioner deposit a sum of Rs.50,000/- (Rupees fifty thousand only) before the trial court on or before 16.03.2018. On such deposit, the orders passed in Cr.M.P.No.1763 of 2016 and Cr.M.P.No.507 of 2017 in Special S.C.No.31 of 2015, dated 19.09.2017 by the learned Sessions Judge, Mahalir Neethimandram, Madurai will be set aside and the petitions in Cr.M.P.No.1763 of 2016 and Cr.M.P.No.507 of 2017 in Special S.C.No.31 of 2015 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai shall stand allowed. Further, on such deposit, the trial court is directed to recall P.Ws.1 to 12 and permit the petitioner to cross-examine those witnesses. In case, the petitioners failed to comply with the aforesaid condition, these Criminal Original Petitions shall stand dismissed automatically without further reference to the Court. Further, it is ordered that out of the said amount, the trial court has to disburse Rs.40,000/- (Rupees forty thousand only) to the P.W.2/victim and the remaining amount of Rs.10,000/- (Rupees ten thousand only) shall be disbursed equally to all other witnesses, except the official witnesses. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge, Mahalir Neethimandram,
Madurai
2. The Inspector of Police,
Thallakulam,
All Women Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

VS

TE/SV-MMS/SAR-4 : 15/03/2018 : 3P/4C