



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.23514 of 2016

Ganesan

...Petitioner/Petitioner/Sole Accused

Vs.

The State Rep. by its,
The Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai.

...Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 27.09.2016 made in Crl.M.P.No.804 of 2016 in Special S.C.No.28 of 2015 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai.

For Petitioner : Mr.M.Jagadeesh Pandian
For Respondent : Ms.S.Bharathi
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed aggrieved by the dismissal of the petition filed under Section 311 Cr.P.C., by the petitioner in person in Crl.M.P.No.804 of 2016 to recall and cross-examine P.W.1 to P.W.13.

2.It is seen from the records that the petitioner has appeared in person and he is not represented by a Counsel. The Court below had also not extended the help of a Legal Aid Counsel to represent the petitioner. Therefore, the petitioner appeared on all hearing dates in person without understanding, neither the proceedings nor his duty to cross-examine the witnesses on the same date, when they are examined in chief.

3.The petitioner is facing trial for the offences punishable under Sections 7 and 8 of POCSO Act. The prosecution has examined 13 witnesses in this case, Section 313 Cr.P.C., questioning was also over and now the case is at the stage of final hearing. At

this point of time, the petition was filed to recall and cross-examine P.W.1 to P.W.13.

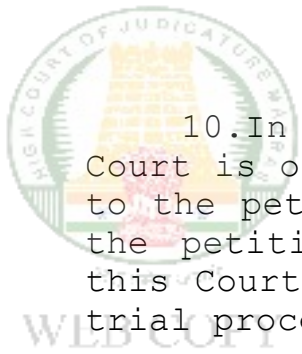
4.The Court below has dismissed the petition on the ground that P.W.1 and 2 were examined on 18.01.2016, P.Ws.3 to 6 were examined on 21.01.2016, P.Ws.7 to 9 were examined on 28.01.2016, P.W.10 was examined on 09.02.2016, P.W.11 was examined on 17.03.2016, P.W.12 was examined on 30.03.2016 and P.W.13 was examined on 07.06.2016, thereafter, the petitioner was questioned under 313 Cr.P.C., on 09.06.2016 and the case was posted for defence side witnesses.

6.The Court below had relied upon the judgment of this Court in the case of **Sankararaman Vs. State represented by the Inspector of Police** reported in **2016 (2) Law Weekly Criminal Page 340**, wherein this Court has held that the dictum of the Hon'ble Supreme Court in the case of **Vinod Kumar Vs. State of Punjab** has to be strictly followed and the victim girl cannot be repeatedly called to the Court for examination by virtue of Section 33 (5) of POCSO Act. The Court has therefore, held that the petition filed by the petitioner is absolutely without any merits.

7.The learned counsel for the petitioner would submit that the petitioner did not understand his rights, duties and the law, since he was not assisted by a counsel. The learned counsel would further submit that the petitioner has now got assistance of an Advocate before the Court below. It is also submitted that the witnesses will be cross-examined on the same day, when they appear and this Court may also fix time limit, within which the entire examination can be closed and thereafter, final arguments will also be completed.

8.The learned Government Advocate (Crl.Side) would submit that the victim, when she was examined in chief, was 9 years old and now she is 12 years old. By virtue of Section 33 (5) of POCSO Act, the victim girl cannot be made to come to the Court repeatedly for examination.

9.If the petitioner had the assistance of a counsel and had failed to cross-examine the witnesses, this Court would have completely concurred with the order of the Court below. However, in this case, it is seen that the petitioner never had the assistance of an Advocate nor the Court below provided the assistance of an Advocate to the petitioner from the State Legal Aid. The assistance of an Advocate has been held to be a fundamental right of an accused in order to defend his case. In this case, the petitioner is facing serious charges under Sections 7 and 8 of POCSO Act. Therefore, it is all the more important for the petitioner to have the assistance of an Advocate.



10. In view of the facts and circumstances of the case, this Court is of the considered view that one last chance must be given to the petitioner to recall and cross-examine the witnesses. Now the petitioner is having the assistance of an Advocate, hence, this Court can also give a direction for completion of the entire trial proceedings within the stipulated time.

11. In view of the above, the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in CrI.M.P.No.804 of 2016 dated 27.09.2016 is hereby set aside and this Criminal Original Petition is allowed with the following directions:-

(a) the Court below shall fix a date for the appearance of the witnesses.

(b) except the victim girl all the other witnesses shall be furnished with the deposition, so that they can refresh their memory and only thereafter, they can be subjected to cross-examine.

(c) insofar as the victim girl is concerned the Court below shall strictly comply with the provisions Under Section 118 of Indian Evidence Act and also the provisions of the POCSO Act and permit the petitioner to cross-examine the victim girl on the very same date she appears before the Court.

(d) under no circumstances, any adjournment can be granted for cross-examination of the victim girl.

(e) on the date, when the witnesses appear, if the petitioner fails to cross-examine them, the accused will forfeit his right to recall the witnesses.

(f) the petitioner shall pay a cost of Rs.1,000/- to each of the witnesses, when they come for giving evidence.

(g) insofar as the victim girl is concerned, the petitioner shall deposit the cost before the Court.

(h) the Court below is directed to complete the entire proceedings in S.C.No.28 of 2015 within a period of three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //



To

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

+ 1 CC TO MR.M.JAGADEESH PANDIAN, ADVOCATE IN SR NO.82689

TA

BU/RP/SAR-III : 10.10.2018 : 4P/5C

Cr1.O.P. (MD) No.23514 of 2016

06.09.2018