



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) No.23734 of 2016

and

CRL.M.P. (MD) No.12536 of 2016

Kannan @ Karuvi Kannan ... Petitioner/Sole Accused

-Vs-

1.State represented by The Inspector of Police,
Chathirapatti Police Station,
Madurai District.
Crime No.32 of 2014

2.R.Packiyam ... Respondents

(second respondent was impleaded as party as per order, dated 03.09.2018 in Crl.M.P. (MD) No.58 of 2017)

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order made by the Learned Sessions Judge, Mahila Neethimandram, Madurai District in Cr.M.P.No.849 of 2016 in Spl.S.C.No.7 of 2015, dated 16.11.2016.

For Petitioner	: Mr.A.Prasanna Rajadurai
For Respondent	: Mr.K.Suyambulinga Bharathi for R1 Government Advocate (Crl. Side) Mr.T.A.Ebenezer for R2

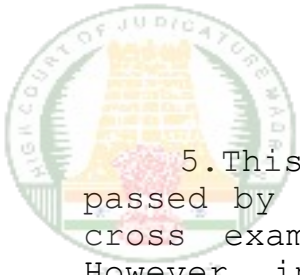
ORDER

This petition has been filed against the order of the Court below dismissing the application filed by the petitioner to recall PW1 to PW5 and cross examine.

2.The petitioner is the accused who is facing trial for an offence under Sections 366 A, 511 IPC r/w Section 6 of Protection of Children from Sexual Offence Act 2012.

3.It is seen from records that the five witnesses were examined on the side of the prosecution between 30.05.2016 to 09.06.2016. The counsel for the petitioner did not cross examine the witnesses. Thereafter, the petition was filed immediately on 01.07.2016. This Court is not able to find any huge lapse of time between the examination of PW1 to PW5 and the filing of the petition to recall them by the petitioner.

4.The Court below has dismissed the petition only by applying the principles of the Honourable Supreme Court in *Vinod Kumar Vs State of Punjab*, reported in 2015 (3) SCC 220.



5.This Court does not find any serious illegality in the order passed by the Court below and it is true that a witness has to be cross examined on the very day when he is examined in chief. However, in some cases the counsel appearing for the accused person do not cross examine the witnesses and as a result of the same, the witnesses are put to be serious prejudice. This case is also of a of a similar nature.

6.In the facts and circumstances of the case, this Court is of the considered view that one last opportunity must be given to the petitioner. Accordingly, the order of the Court below made in Crl.M.P.No.849 of 2016, dated 16.11.2016, is hereby set aside.

7.The trial Court shall fix the date for appearance of the witnesses. Before putting the witnesses into the box, he shall be furnished with the deposition so that he can refresh his memory and only thereafter he can be subjected to cross examine on that day. When the witnesses appears, if the accused fails to cross examine him, even on account of boycott of Courts, accused will forfeit his right to recall him again. The trial Court is directed to complete this exercise as expeditiously as possible. The case is of the year 2015. Therefore, there shall be a direction to the learned Special Judge, Mahila Court, Madurai, to complete the proceedings within a period of six months from the date of receipt of a copy of this order.

8.With the above observation this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar (CS-III)

To

- 1.The Sessions Judge, Mahila Court, Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.Prasanna Rajadurai, Advocate, SR.No. 82034
+1cc to Mr.T.A.Ebenezer, Advocate, SR.No.81957

CRL.O.P. (MD) No.23734 of 2016
03.09.2018

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