

**Crl.M.P.No.5413 of 2019 in**  
**Crl.A.No.694 of 2018**

**P.VELMURUGAN, J.,**

The petitioner was convicted for the offence punishable under Sections 9(f) r/w 10, 9(l) r/w 10 and 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012, (POCSO Act) by the learned Sessions Judge, Tiruppur, by judgment dated 17.10.2018, against which, the petitioner/appellant has filed the present criminal appeal.

**2** Pending the above criminal appeal, the appellant has filed this miscellaneous petition seeking additional evidence of P.W.3, Attendance Register of Madharasa by examining the petitioner as D.W.1 Under Section 391 of Cr.P.C. in the above appeal.

**3** The learned counsel appearing for the petitioner would submit that one of the victims namely Fowzia/P.W.2 did not attend Arabic School at Madharashaa since January 2017 and her name was removed in the month of February 2017 by P.W.3 and hence it is necessary to produce the Attendance Register of Madharasa by examining the petitioner as D.W.1 under Section 391 of Cr.P.C. in the above appeal.

**4** The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the petitioner/appellant did not take any steps to bring the Attendance Register before the Court below and now with an intention to drag the proceedings, has filed this petition, which has no merit and liable to be dismissed.

**5** Heard the learned counsel appearing on either side and perused the materials available on record.

**6** It is seen that the petitioner/appellant/accused did not adduce any oral or documentary evidence before the Court below after completion of the prosecution evidence. The learned Sessions Judge, after hearing both the parties, with the available materials, had convicted the petitioner. The petitioner did not produce any evidence before the Court below and he has not assigned any reason as to why he has not taken any steps to mark the document before the Court below. Even otherwise, the learned Sessions Judge, while convicting the petitioner/appellant, had observed that the document sought to be marked by the petitioner i.e. Attendance Register of Madharashaa is not authenticated document and is not public document and therefore there is possibility of creating or altering the attendance Register for

the purpose of this case. Therefore this Court is of the view that present petition seeking additional evidence is only an after thought and there is no valid reason assigned by the petitioner. The ingredients of Section 391 Cr.P.C. is not fulfilled by the petitioner/appellant to allow this miscellaneous petition. This Court does not find that the document sought to be produced by the petitioner/appellant is essential to decide this case. Even otherwise, no suggestion was put before the prosecution witness Nos.1 to 4 that the victims did not turn up the Arabic School since January 2017 and their names were removed from the Attendance Register in the Month of February 2017. In view of the above and also considering the nature of offence alleged to have been committed by the petitioner/accused, this Court finds that there is no merit in the miscellaneous petition.

**7** For the above said reasons, this miscellaneous petition is dismissed.

List the main appeal for hearing on 24.04.2019.

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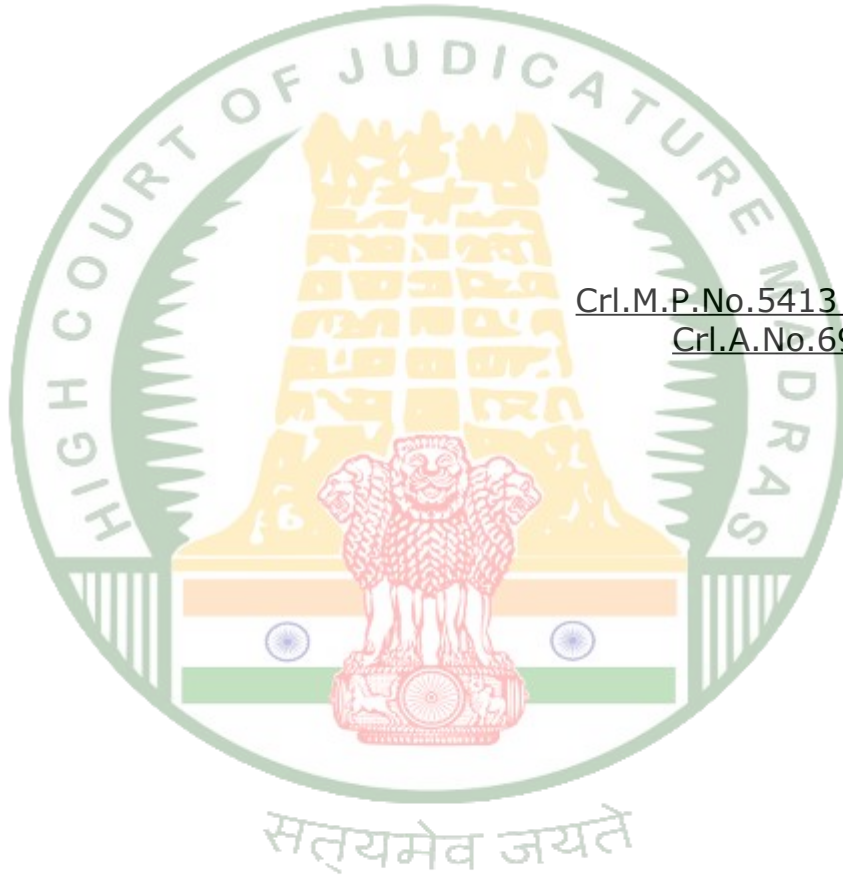
**22.04.2019**

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**Note: Issue order copy on 23.04.2019**

**P.VELMURUGAN, J.,**

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