

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Cr1.O.P.No.14649 of 2019

Sakthivel

... Petitioner / Accused

Vs.

State rep.by

The Inspector of Police,
Velur Police Station,
Namakkal District.
(Crime No.277 of 2016)

... Respondent / Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to Set Aside the order dated 07.03.2019 passed in C.M.P.No.871 of 2018 in Spl.C.C.No.37 of 2016, on the file of learned Sessions (Fast Track Mahila) Judge, Namakkal and to allow the Criminal Original Petition.

For Petitioner : Mr.W.Camyles Gandhi
For Respondent : M.Mohamed Riyaz, APP

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed under Section 311 of Cr.P.C to re call PW-1 to PW-5 for the purpose of cross examination.

2. The petitioner is facing trial before the Court below for an offence under Section 366(A) IPC and Section 3 r/w Section 4 of POCSO Act. PW-1 to PW-5 were examined in chief on 06.02.107. However, the petitioner even though was represented by a counsel, chose not to cross examine the witnesses. Thereafter after nearly 1 1/2 years, a petition came to be filed under Section 311 of Cr.P.C., to recall PW-1 to PW-5 for cross examination. The said petition came to be dismissed by the Court below by an order dated 07.03.2019, mainly on the ground that in a case involving a victim under the POCSO Act, the victim should not be again and again exposed before the Court to recall the traumatic experience, and there is a clear bar under Section 33(5) of the POCSO Act. The Court below also took into consideration, the judgment of the Hon'ble Supreme Court in Vinod Kumar .Vs. State of Punjab.

3. The learned counsel for the petitioner submitted that the petitioner is facing serious charges under the POCSO Act, and therefore, an opportunity may be given to the petitioner to recall PW-1 to PW-5 for cross examination.

4. The learned counsel appearing on behalf of the respondent Police submitted that there are absolutely no grounds to interfere with the order passed by the Court below and the present Criminal Original Petition has to be dismissed.

5. This Court has carefully considered the submissions made on either side and also the materials available on record.

6. In this case, PW-1 to PW-5 were examined in chief on 06.02.2017. If the counsel representing the petitioner was not well on that day, nothing prevented the petitioner from filing a petition immediately for re-calling PW-1 to PW-5. There is absolutely no explanation as to why it took 1 1/2 years for the petitioner to file a petition under Section 311 of Cr.P.C. The cross examination of a witness cannot be subjected to the convenience of an accused person more particularly in an offence involving under POCSO Act. The petitioner was aware that he was facing a serious crime, and the petitioner does not even state in his application filed under Section 311 of Cr.P.C., as to why he took such a long-time to file a petition for recalling the witnesses.

7. The POCSO Act has clearly prescribed limitations in recalling witnesses more particularly the victim of the crime. Section 33(5) of the Act prohibits calling a victim to the Court repeatedly to testify.

8. It will be relevant to recall the words of the Hon'ble Supreme Court in Vinod Kumar.Vs. State of Punjab reported in 2015 3 SCC 220 , wherein, the Honble Supreme Court held that examination of a witness cannot be at the pleasure or at the leisure of the defense counsel and the witnesses will have to be examined on the same day they are examined in chief or within a reasonable time.

9. This Court does not find any illegality or infirmity in the order passed by the Court below, and there are absolutely no grounds to interfere with the order passed by the Court below.

In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

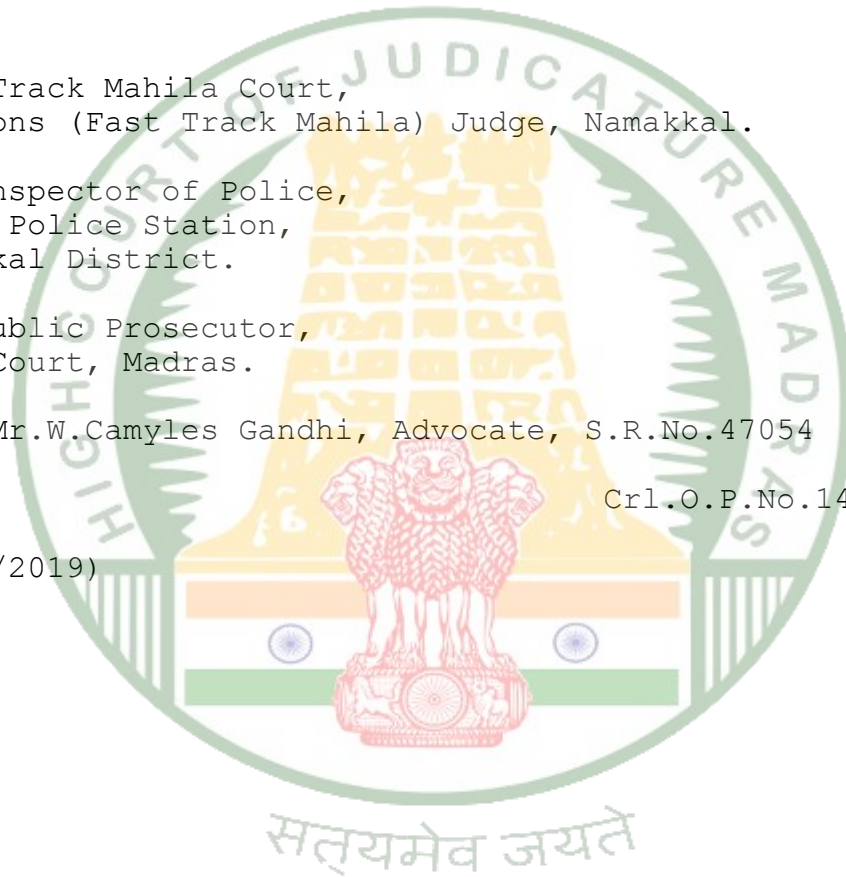
To

1. Fast Track Mahila Court,
Sessions (Fast Track Mahila) Judge, Namakkal.
2. The Inspector of Police,
Velur Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.47054

Crl.O.P.No.14649 of 2019

VG-II(CO)
SSM(01/07/2019)



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