

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.15488 of 2019
and
Crl.M.P.No.7666 of 2019

Vinoth Kumar

...Petitioner

Vs.

Inspector of Police,
Perumanallur Police Station,
Tiruppur District.
(Cr. No.534 of 2018)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order dated 29.05.2019 made in C.M.P. No.252 of 2019 in Spl. S.C.No.3 of 2019 on the file of the learned Sessions Judge, Magalir Neethimandram, Tiruppur and set aside the same.

For Petitioner : Mr. A.Saranraj

For Respondent : Mr.M.Mohammed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C. to recall PW1 and PW2 for further cross examination.

2. The petitioner is facing trial before the Court below for an offence under Section 5(1) r/w 6, 5(m) r/w 6 of POCSO Act 2012. The petitioner was represented by a counsel and he had also cross examined PW1 and PW2 when they were examined in chief by the prosecution. Thereafter, the petitioner changed his counsel and the counsel who came on record, on going through the records, deemed it fit to further cross examine PW1 and PW2 by recalling them.

3. The Court below dismissed the petition mainly on the ground that the victim child cannot be called to the Court again and again in view of the bar under Section 33 (5) of the POCSO Act and the circular issued by this Court to the effect that the child should not be repeatedly called to the Court to testify. The Court below also took into consideration the fact that the petitioner had already cross examined PW1 and PW2 and therefore, the mere change in counsel cannot be a ground to seek for further cross examination.

4. The learned counsel for the petitioner submitted that since the petitioner is facing very serious charges, one last opportunity can be given to the petitioner to recall PW1 and PW2 for cross examination.

5. The learned Additional Public Prosecutor submitted that the Court below has given sufficient reasons while dismissing the petition and there are no grounds to interfere with the same.

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

7. This Court is in total concurrence with the orders passed by the Court below and the reasons given therein for dismissing the petition insofar as the PW1 / victim is concerned. The victim cannot be called to the Court repeatedly to testify and the same is clear from the provisions of Section 33(5) of the POCSO Act.

8. Insofar as PW2 is concerned, he is the father of the victim. The petitioner is facing very serious charges and therefore, this Court deems it fit to give one last opportunity to the petitioner to recall PW2 for further cross examination. To that extent, the order passed by the Court below requires interference.

9. The order passed by the Court below in CrI.M.P.No.252 of 2019 in Spl. C.C. No.3 of 2019 is partly set aside insofar as recalling PW2 is concerned. The Court below shall issue summons to PW2 for his appearance and the learned counsel for the petitioner shall cross examine PW2 on the same day of his appearance and complete the cross examination on the same day. It is made clear that if for any reasons, the petitioner fails to cross examine PW2 on the date of his appearance, the petitioner shall forfeit his right to recall PW2 at any future date. The petitioner shall pay a sum of Rs.1000/- as cost to PW2 on the date of his appearance.

10. It is also made clear that the petitioner shall cross examine on the same day, the other witnesses examined in chief by the prosecution.

11. In the result, this Criminal Original Petition is partly allowed and the Court below is directed to complete the proceedings in Spl. S.C.No.3 of 2019 within a period of four months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethimandram, Tiruppur.
2. The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.

PMS (CO)
CSL/20.06.2019

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