

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.16035 of 2019

and

Crl.M.P.No.8003 of 2019

R.Gokul

...Petitioner

Vs.

The State

Rep. by Inspector of Police,  
All Women Police Station,  
Namakkal.

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 27.02.2019 in Crl.M.P.No.54 of 2019 in Spl.C.C.No.26 of 2018 on the file of Fast Track Mahila Court, Namakkal and consequently direct to recall the PW1 and PW2 for cross examination.

For Petitioner : Mr. V.Thillaikumar

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

ORDER

This petition has been filed against 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 cross-examination.

2. The petitioner is facing trial before the Court below for an offence under Section 363 IPC, Section 5(1) r/w 6 of POCSO Act and Section 3(2)(v) & 3(1)(r) SC/ST (POA) Amendment Act 2015. The prosecution had examined PW1 and PW2 on 10.01.2019. Since the counsel for the petitioner was not present before the Court, the evidence was closed and the case was posted for examination of other prosecution witnesses.

3. The petitioner thereafter filed an application under Section 311 of Cr.P.C. on 28.01.2019 to recall PW1 and PW2 for cross-examination. The Court below dismissed the application mainly on the ground that the victim girl cannot be repeatedly

subjected to examination and the same is a bar under 33(5) of the POCSO Act. The Court below also took into consideration the fact that the petitioner did not properly explain the reason as to why he did not cross-examine PW1 and PW2 on the same day they were examined in Chief.

4. The learned counsel for the petitioner submitted that one last opportunity can be given to the petitioner to recall PW1 and PW2 for cross examination and that the petitioner will not drag on with the proceedings and he will cross-examine all the other prosecution witnesses on the same day they are examined in Chief.

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent Police.

6. Taking into consideration the facts and circumstances of the case and also of the fact that the petitioner is facing very serious charges under the POCSO Act and the petitioner had filed a petition to recall PW1 and PW2 immediately, this Court is inclined to give one last opportunity for the petitioner to recall and cross examine PW1 and PW2.

7. The order passed by the Court below in Cr.M.P.No.54 of 2019, dated 27.02.2019, is hereby set aside. The Court below is directed to issue summons to PW1 and PW2 and fix the date for their cross examination and on the day of their appearance, the petitioner shall cross examine PW1 and PW2 and complete the examination on the same day. If for any reasons the petitioner fails to cross-examine PW1 and PW2 on the date of their appearance, the petitioner shall forfeit his right to recall these witnesses at any future date. The petitioner shall pay a cost of Rs.500/- each to PW1 and PW2 on the date of their appearance. The petitioner shall also cross examine all the other prosecution witnesses on the same day they are examined in Chief.

8. This Criminal Original Petition is allowed and there shall be a direction to the Court below to complete the proceedings SP1.C.C.No.26 of 2018 on the file of Fast Track Mahila Court, Namakkal, within a period of four months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CJ Conf.,)

//True Copy//

Sub Assistant Registrar

rri/kal

To

1. The Fast Track Mahila Court,  
Namakkal.
2. The Inspector of Police,  
All Women Police Station,  
Namakkal.
3. The Public Prosecutor,  
High Court, Madras.

+1 cc to Mr.V.Thillaikumar, Advocate, S.R.No.51018

CRL.O.P.No.16035 of 2019  
and  
Crl.M.P.No.8003 of 2019

PM(CO)  
SSM(16/07/2019)



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