

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P. No.18513 of 2019

Ajithkumar @ Ajaykumar .. Petitioner/Petitioner/Accused

.vs.

State: Rep. by
The Inspector of Police,
W-7, All Women Police Station,
Anna Nagar,
Chennai - 600 040. ..Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set-aside the order passed in Crl.M.P.No.9614 of 2019 in SC No.395 of 2018 passed by the Sessions Judge, Mahila Court, Chennai, dated 10.06.2019 and to recall the PW1.

For Petitioner : Mr.K.Kannann

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

ORDER

This petition has been filed challenging the order passed by the Court below partly dismissing the application filed under Section 311 of Cr.P.C. by the petitioner insofar as recalling PW1 is concerned.

2. The petitioner is facing trial before the Court below for the offences under Sections 363, 366(A) IPC and Section 6 of POCSO Act, 2012. The prosecution examined three witnesses (PW1 to PW3). The petitioner did not cross-examine any of these witnesses. Therefore, the petitioner filed an application under Section 311 of Cr.P.C. to recall PW1 to PW3 for the purpose of cross-examination.

3. The Court below partly allowed the application insofar as PW2 and PW3 are concerned and dismissed the application insofar as PW1 is concerned, on the ground that PW1 is the victim girl who cannot be called for cross-examination again and again

in view of the bar under Section 33(5) of the POCSO Act.

4. The learned counsel for the petitioner submitted that the petitioner and PW1 had a relationship and the learned counsel in order to substantiate the same, brought to the notice of this Court, the 164 statement recored from the victim. The learned counsel therefore submitted that since the petitioner is facing serious charges under the POCSO Act, an opportunity may be given to the petitioner to recall PW1 also for cross-examination.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the petitioner failed to cross-examine PW1 when she was examined in chief and the victim girl cannot be exposed before the Court repeatedly and the order passed by the Court below is perfectly right and there is no ground to interfere with the same.

6. Taking into consideration the facts and circumstances of the case and also of the fact that there was a previous relationship between the petitioner and the PW1 and the specific stand taken by PW1 in the 164 statement recorded before the learned Magistrate, this Court deems it fit to give an opportunity to the petitioner to recall and cross-examine PW1. The Court below had already given an opportunity to the petitioner to recall and cross-examine PW2 and PW3.

7. The order passed by the Court below in CrI.M.P. No.9614 of 2019 dated 10.06.2019, insofar as dismissing the application to recall PW1 is concerned, is set aside. The Court below is directed to fix a date for the appearance of PW1 and she shall be cross-examined by the petitioner on the same day and the cross-examination shall be completed on the same day. If for any reasons the petitioner fails to cross-examine PW1 on the date of appearance, the petitioner shall forfeit his right to recall PW1 in future. The petitioner is directed to pay a cost of Rs.750/- to PW1 on the date of appearance.

8. In the result, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in SC No.395 of 2018 within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssr

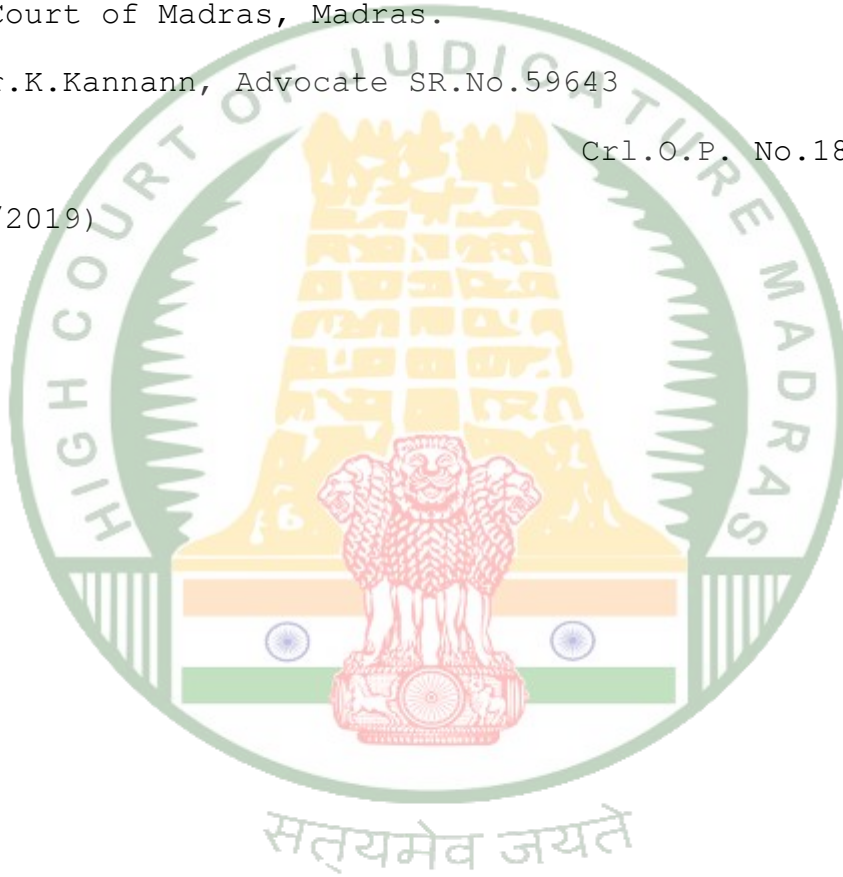
To

1. The Sessions Judge,
Mahila Court, Chennai.
2. The Inspector of Police,
W-7, All Women Police Station,
Anna Nagar,
Chennai - 600 040.
3. The Public Prosecutor,
High Court of Madras, Madras.

+2cc to Mr.K.Kannann, Advocate SR.No.59643

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AD(CO)
GMY(26/08/2019)



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