

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.19820 of 2019

and

CrI.M.P No.10158 of 2019

Raja @ Pothuraja

...Petitioner

.Vs.

The State rep. by
The Inspector of Police,
All women Police Station,
Omalur,
Salem District.

....Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 14.05.2019 made in CrI.M.P.No.02 of 2019 in Spl.S.C.No.43 of 2018, on the file of Sessions Judge, Mahila Court, Salem.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below partly allowing the application filed under Section 311 of Cr.P.C., to recall PW-1- to PW-5 and dismissing the petition insofar as PW-2 is concerned.

2.The petitioner is facing trial before the Court below for an offence under Section 5(m) and Section 6 of the POCSO Act. PW-1 to PW-5 were examined in chief by the prosecution. None of these witnesses were cross examined. Later the petitioner filed an application under Section 311 of Cr.P.C., to recall and cross examine PW- 1 to PW-5. This petition has been dismissed in part to the extent that the petitioner was not allowed to recall PW-2, for cross examination on the ground that PW-2 is a child and there is a bar under Section 33(5) of the POCSO Act, to repeatedly expose a child before the Court.

3.The learned counsel for the petitioner submitted that the petitioner is facing serious charges, and therefore one last opportunity can be given to the petitioner to recall PW-2 for cross examination. The learned counsel further submitted that the petitioner was not in the scene of occurrence at the time of the alleged incident and he has sufficient proof to establish the same.

4.This Court does not find any illegality or infirmity in the Order passed by the Court below. There are absolutely no reasons to interfere with the Order passed by the Court below. The Court below was perfectly right in saying that the child cannot be exposed repeatedly before the Court, to recall the gory incident.

5. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in Spl.S.C.No.43 of 2018, 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(J)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Inspector of Police,
All women Police Station,
Omalur,
Salem District.

2.The Sessions Judge,
Mahila Court, Salem.

3.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.64037

CRL.OP.No.19820 of 2019

RRS (30/08/2019)