

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.21556 of 2019
and Crl.MP.No.11171 of 2019

1. Chinnathambi@ bommanaicken

2. Ramasamy @ KathirvelPetitioners /Petitioners/
Accused 1 and 2

vs.

The Inspector of Police,
Mallasamudram Police station,
Namakkal District

... Respondent / Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 13.12.2018 passed in Crl.MP No.703 of 2018 in Spl.CC No.5 of 2016 on the file of Sessions (Fast Track Mahila), Judge, Namakkal and allow the above Criminal Original petition.

For Petitioner : Mr.I.C.Vasudevan
for Mr.Karthick

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

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioners under Section 311 of Cr.PC to recall PW1 to PW20 for the purpose of cross-examination.

2.The petitioners are facing trial before the Court below for an offence under Section 363, 366(A) IPC, Sec 5(n) r/w 17 of POCSO Act.

3. The prosecution had examined 20 witnesses and out of these 20 witnesses, the petitioner had examined PW1 to PW7, PW9, PW11, PW14, PW16 and PW17. The petitioner did not cross examine PW10, PW12, PW13, PW15, PW18 to PW20.

4. The petitioner filed an application under Section 311 of Cr.PC to recall all the 20 witnesses on the ground that the Senior Counsel has to cross-examine these witnesses. The Court below dismissed the application mainly on the ground that the case was pending from the year 2016 onwards and sufficient opportunity was given to the petitioner to cross-examine the witnesses. The Court below also took into consideration the fact that earlier the petitioners had filed an application under Section 311 of Cr.PC to recall PW1 to PW3 for cross-examination and the same was also allowed. The Court below took into consideration the mandatory provisions under Section 33(5) of POCSO Act, wherein the victim child cannot be repeatedly subjected to trial.

6. The learned counsel for the petitioners submitted that for the fault on the part of the Advocate, a client should not suffer. The learned counsel submitted that even if this Court is not inclined to permit the recall of witnesses, who have already been cross-examined, this Court may at least consider recalling the witnesses who have not been cross-examined by the petitioners.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the case has been pending from the year 2016 onwards and under the POCSO Act, cases must be disposed of within a period of one year. Due to the delay tactics adopted by the petitioners, the case is now pending for the last three years. The petitioners have now filed an application to recall almost all the witnesses for cross-examination and that itself shows that the petitioners want to keep the proceedings pending without progress. Therefore, the learned counsel submitted that the order of the Court below has to be sustained and this petition has to be dismissed.

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

9. This Court is of the considered view that there is no infirmity or illegality in the order passed by the Court below. The Court below has given cogent reasons for dismissing the application. However, considering the fact that the petitioners are facing serious charges, one last opportunity can be given to the petitioners to recall PW10, PW18 to PW20 for cross examination on payment of cost. In the result the order passed

by the Court below is confirmed and the Court below shall issue summons for the appearance of PW10, PW18 to PW20. All these witnesses must be cross-examined on the date of their appearance and must be completed on the same day. If for any reasons, the petitioners fail to cross examine these witnesses on the date of their appearance, the petitioners will forfeit their right to recall these witnesses in future. The petitioners shall pay a sum of Rs.1,500/- to each of these witnesses, on the date of their appearance.

10. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in Special CC No.5 of 2016, within a period of three months from the date of receipt of copy of this order. The trial shall be conducted on a day to day basis and if the petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon the presence of the petitioner and remand him to custody as per the judgment of the Hon'ble Supreme Court in STATE OF UTTAR PRADESH VS. SHAMBHU NATH SINGH (JT 2001 (4) SC 319). Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

+1 CC to Mr.Karthick, Advocate sr 68399.

PA(CO)
SP(05/09/2019)

CrI.O.P No.21556 of 2019