

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.33006 of 2019

Sadiq Basha

... Petitioner

Vs.

The State by
Inspector of Police,
Padalam Police Station,
Kanchipuram District
Crime No.645/2015

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and set aside the order passed by the learned Mahila Court cum Additional District Sessions Judge, Chengalpet in Crl.M.P.No.1992 of 2018 in Spl.Case No.26 of 2018 dated 30.11.2018 and permit the petitioner to cross examine the witnesses PW1 and PW2.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed seeking a direction, to call for the records and set aside the order passed by the learned Mahila Court cum Additional District Sessions Judge, Chengalpet in Crl.M.P.No.1992 of 2018 in Spl.Case No.26 of 2018 dated 30.11.2018 and permit the petitioner to cross examine the witnesses, PW1 and PW2.

2.The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Sections 363, 366, 376(1) IPC and Sec.2(1)(b), 6 r/w 5 of Protection of Children from Sexual Offence Act. He further submitted that on 20.08.2018, Pws 1 and 2/father and victim girl were examined in Chief and on that date, the counsel for the petitioner/accused has filed an application under Section 231(2) of Cr.P.C to defer cross examination on the ground that the

Senior counsel for the petitioner is held up in another Court. But, the Trial Court has dismissed the said petition and recorded as no cross. He further submitted that on 30.11.2018, the petitioner has filed a petition under Section 311 Cr.P.C in Cr.M.P.No.1992 of 2018 to recall Pws 1 and 2 for cross examination. The learned Trial Court Judge has dismissed the said petition also without giving any opportunity to the petitioner to cross examine the said PWs. He further submitted that since the aforesaid witnesses are material witnesses, in case they are not cross-examined that would cause prejudice to the petitioner and hence, he prayed to grant one more opportunity to the petitioner to cross examine those witnesses.

3.The learned Additional Public Prosecutor has submitted that the learned Trial Court has dismissed the Cr.M.P.No.1992 of 2018 on 30.11.2018 and after nine months that is only on 29.07.2019, the petitioner has filed copy application and obtained an order on 20.08.2019 and filed this petition on 06.09.2019. He further submitted that the conduct of the petitioner shows that his main intention to drag on the proceedings and hence he strongly opposed this petition.

4.It is seen from the impugned order, the said order was passed by the learned Trial Court on 30.11.2018 but the petitioner has filed copy application only on 29.07.2019 and obtained certified copy on 21.08.2019 and filed this petition on 06.09.2019 without enclosing vakalat and the same was returned on 12.09.2019 and the petitioner has represented this petition only on 04.12.2019. So the conduct of the petitioner shows that in all stages, he tried to protract the proceedings. However, considering the charges the petitioner is facing, with a view to give one more opportunity to the petitioner, this Court is inclined to allow this petition subject to payment of costs.

5.In the result, this petition will be allowed on deposit of Rs.10,000/- (towards expenses to PWs 1 and 2) before the Trial Court on or before 16.12.2019, failing which, this petition shall stand dismissed automatically without any further reference to this Court. In case, the petitioner complies with the said condition within the aforesaid time, the Trial Court is directed to recall the PWs 1 and 2 and give an opportunity to the petitioner to cross examine those witnesses. The petitioner shall cross examine those witnesses on the date of appearance of the PWs 1 and 2 without seeking any adjournments.

6. With the aforesaid directions, this petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Padalam Police Station,
Kanchipuram District

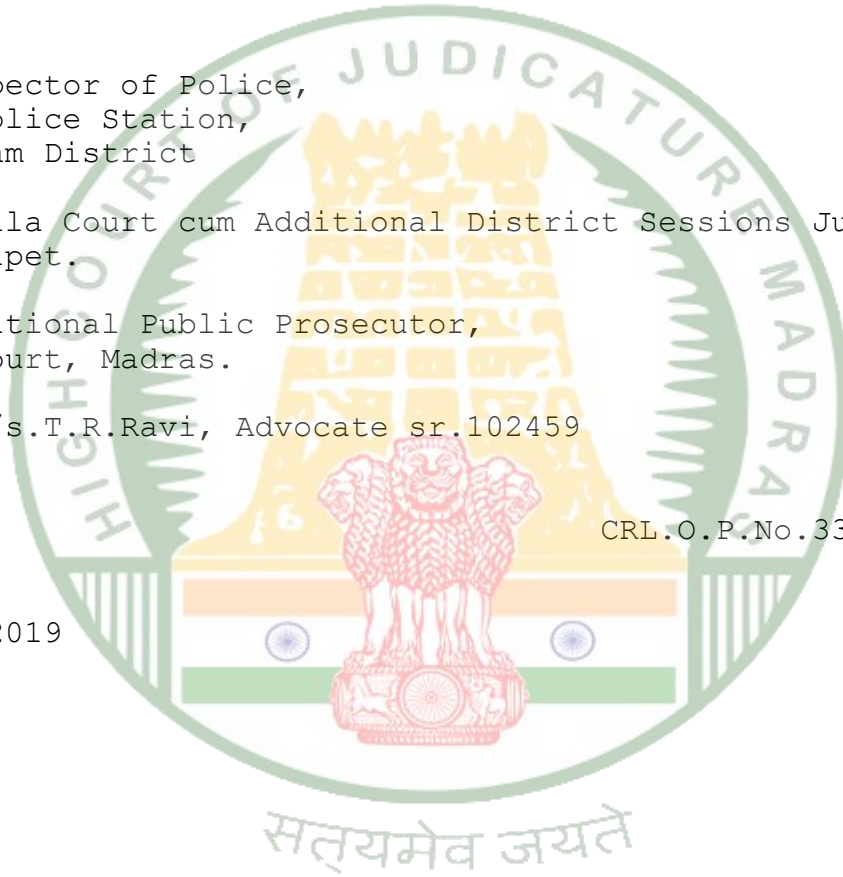
2.The Mahila Court cum Additional District Sessions Judge,
Chengalpet.

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

+lcc to M/s.T.R.Ravi, Advocate sr.102459

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