

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CRL.O.P.NO.30854 OF 2019

1.Murugan
2.Meenachi

... Petitioners

Vs

State rep by,
The Inspector of Police,
All Women Police Station,
Cheyyar, Thiruvannamalai District.
(Crime No.9 of 2015).

.... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order dated 14.08.2019 in Crl.M.P.No.679 of 2019 made in S.C.No.28 of 2016 by the District and Sessions Judge, Fast Track Mahila Court, Thiruvannamalai in respect to the recall of PW4, and also direct the Trial Court to recall the witness namely PW4, and also direct the Trial Court to recall the witness namely PW4 for cross examination.

For Petitioners: Mr.R.Sasikumar

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The present petition is filed to set aside the order dated 14.08.2019 in Crl.M.P.No.679 of 2019 made in S.C.No.28 of 2016 passed by the learned District and Sessions Judge, Fast Track Mahila Court, Thiruvannamalai and to recall the witness, namely PW4, for cross examination.

2. In normal circumstances, this Court will not be inclined to interfere with the order refusing to recall and cross examine a child witness, in view of Section 33(5) of the POCSO Act. Nevertheless, Section 3(5) of the POCSO Act only prohibits repeated calling of the child witness, for the purpose of examination.

3. In the present case, the child witness has not been earlier cross examined. Since the offences also involves the offence under the POCSO Act, such a statement of the child witness will not only be of assistance to the petitioners, but also to the Court for proper adjudication. However, in view of the prejudice that could be caused to the child victim as well as her parents, namely PW1 and PW2, the petitioners can be put on certain terms, for the purpose of cross examination.

4. In the light of the above observations, the impugned order dated 14.08.2019 passed in Crl.M.P.No.679 of 2019, is set aside. Consequently, the learned District and Sessions Judge, Fast Track Mahila Court, Thiruvannamalai shall permit the petitioners herein to cross examine PW4 on the next hearing date of the proceedings in S.C.No.28 of 2016, which falls immediately after the production of the order of this Court and complete such cross examination of the child witness, namely PW4, on the same day.

5. The Trial Court shall strictly adhere to the procedure contemplated for recording of evidence of the child witness as per the provisions of the POCSO Act as well as the rules laid therein. The petitioners shall also pay a sum of Rs.10,000/- by way of costs to the child victim's parents, namely PW1 and PW2, as a pre-condition for summoning and cross examining the child and produce such proof of payment of cost before the Trial Court.

6. The Criminal Original Petition stands disposed of accordingly.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk/jas

To

1. The District and Sessions Judge,
Fast Track Mahila Court,
Thiruvannamalai.
2. The Inspector of Police,
All Women Police Station,
Cheyyar,
Thiruvannamalai District.

3. The Public Prosecutor,
High Court of Madras.

+lcc to Mr.V.R.Appaswamee, Advocate, S.R.No.95770

Crl.O.P.No.30854 of 2019

BR(CO)
CS/13/12/2019



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