

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.12.2019
CORAM
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM
Crl. O.P. No. 32451 of 2019

Selvam

... Petitioner

Vs.

State rep. By
The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai 49.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 07.11.2019 passed against Crl.M.P.No. 22291 of 2019 in S.C.No.339/2019 by the Learned Sessions Judge, Mahila Court, Chennai and set aside the same.

For Petitioner : Mr.P.Prince Premkumar

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

O R D E R

This petition has been filed to call for the records pertaining to the order dated 07.11.2019 passed against Crl. M.P. No. 22291 of 2019 in S.C.No.339/2019 by the Learned Sessions Judge, Mahila Court, Chennai and set aside the same.

2.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

3.Learned counsel for the petitioner has submitted that on 04.02.2019, P.W.1 and P.W.2 were examined in chief and at that time, the petitioner has filed application under Section 231 (2) Cr.P.C to defer cross-examination of the said witnesses, until examination of L.W.3, but the learned Trial Judge has dismissed the said petition. He further submitted that subsequently, the prosecution dispensed with L.W.3 and hence, the petitioner has filed a petition under Section 311 of Cr.P.C to recall P.W.1 and P.W.2, but the learned Trial Judge has dismissed the said petition also. He further submitted that if the learned Trial Judge had issued summons directing the prosecution to produce all the eye-witnesses on the same day, this kind of problem

would not have arose. He submitted that since the petitioner is facing very serious charge, an opportunity to cross-examine the material witnesses, viz., P.W.1 and P.W.2 may be given to him.

4.Per contra, learned Additional Public Prosecutor appearing for the respondent has submitted that since the Court has issued summons to P.W.1 and P.W.2 alone, directing them to appear on 04.02.2019, the prosecution has produced on that date only those witnesses. He further submitted that as per Section 33 (5) of the POCSO Act, 2012, the Special Court shall ensure that the child is not called repeatedly to testify in the Court and hence, the Trial Court has rightly dismissed the petition filed by the accused. Therefore, he prayed to dismiss the petition.

5.If the Trial Court issued summons to all the eye-witnesses to appear on a single day, this kind of problem could have been avoided. Atleast, when the petitioner filed a petition to defer the cross-examination of P.W.1 and P.W.2, the prosecution would have informed to the Court that it is not going to examine L.W.3. Considering the aforesaid facts and also the charge which is being faced by the accused, this Court is of the view that one more opportunity should be given to the petitioner to cross-examine P.W.1 and P.W.2. Hence, in the interest of justice, this Court is inclined to allow this petition.

6.In the result, this Criminal Original Petition is allowed and the order passed by the learned Sessions Judge, Mahila Court, Chennai in Crl. M.P. No. 22291 of 2019 in S.C. No. 339 of 2018 dated 07.11.2019 is set aside. The Trial Judge is directed to recall P.W.1 and P.W.2 and give an opportunity to the petitioner to cross-examine the said witnesses. Further, the petitioner is directed to cross-examine the said witnesses on their appearance before the Trial Court without seeking any adjournment.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai 49.

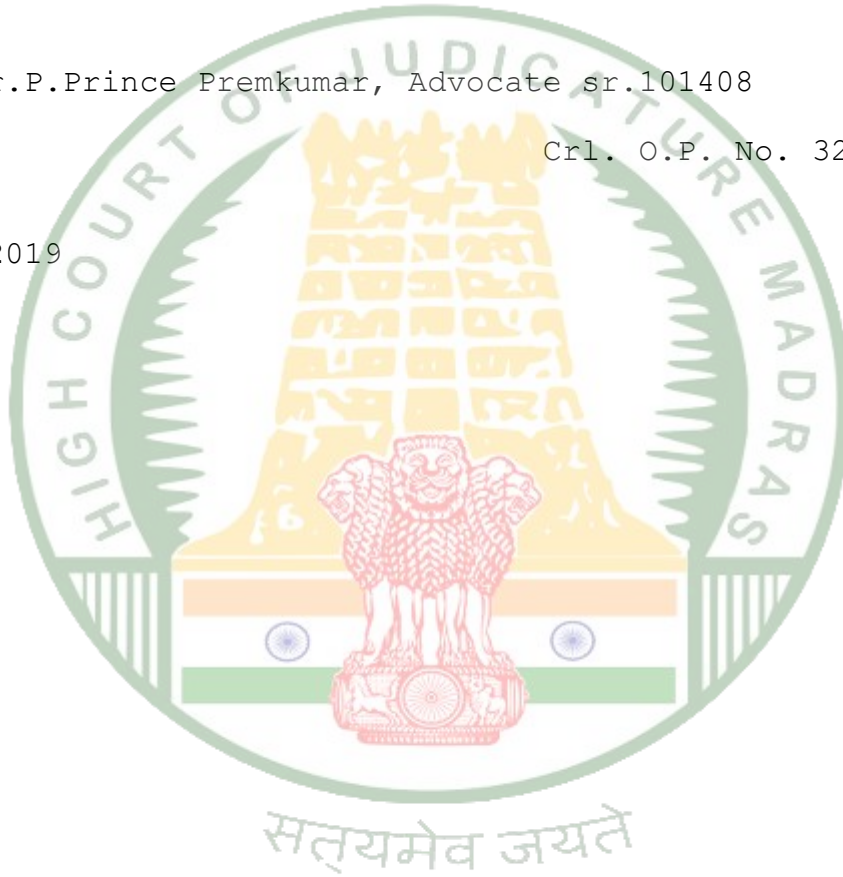
2. The Sessions Judge,
Mahila Court, Chennai.

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

+lcc to Mr.P.Prince Premkumar, Advocate sr.101408

Cr1. O.P. No. 32451 of 2019

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nr 10/12/2019



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