



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.34048 of 2019

1. Ajith A Ajithkumar
2. Rajasekar
3. Gomathi
4. Munisamy

... Petitioner

Vs.

The Inspector of Police,
Panamadangai Police Station,
Vellore District.
(Crime No.57 of 2017)
... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to set aside the order passed in Cr.M.P.No.750 of 2019 in S.C.No.40 of 2019 dated 26.09.2019 on the file of the Sessions Judge Mahila Court, Vellore and recall the PW2 for cross examination.

For Petitioners	: Mr.G.Nirmalkrishnan
For Respondent	: M.Mohamed Riyaz Additional Public Prosecutor

ORDER

This petition has been filed by accused Nos.1, 2 , 4 and 5 to set aside the order passed by the Sessions Judge, Mahila Court, Vellore in Cr.M.P.No.750 of 2019 in S.C.No.40 of 2019 dated 26.09.2019.

2. The learned counsel for the petitioners has submitted that the petitioners are facing trial for the alleged offences under Sections 366, 366 r/w 34 IPC, Section 9 of Prohibition of Child Marriage Act, Sec 5(1) r/w6, 6r/w 17 of POCSO Act. He further submitted that P.W.1 and P.W.2 were examined before the trial court in chief on 09.07.2019 and on that date, since their counsel handed over the bundle, they could not cross examine the



said witnesses. Hence, they filed petition under Section 311 of Cr.P.C in Cr.M.P.No.750 of 2019 to re-call the aforesaid witnesses, but, the learned trial court judge has allowed the said petition partly in respect of P.W.1 alone on payment of batta of Rs.500/-, but, he dismissed the petition in respect of P.W.2 stating that as per Section 33 (5) of POCSO Act, the victim girl cannot be called repeatedly to testify in the Court. He further submitted that the petitioners are facing serious charges, an opportunity may be given to the petitioners to cross-examine P.W.2 who is the material witness.

3. The learned Additional Public Prosecutor has submitted that P.W.1 and P.W.2 were examined on 09.07.2019 in chief, but, on that date, the petitioners have not cross-examined the said witnesses. Subsequently, the petitioners have filed the petition to re-call the aforesaid witnesses and in order to give an opportunity to the petitioners, the trial court has partly allowed the said petition in respect of P.W.1 alone and since P.W.2 is a victim girl, she cannot be called repeatedly to appear before the court for giving evidence and hence, the trial court has rightly dismissed the petition, with regard to P.W.2 and in the said order this court need not interfere.

4. Considering the fact that the petitioners are facing serious charges, this court is of the view that an opportunity to be given to the petitioners to cross-examine P.W.2 who is aged about 17 years. However, the petitioners shall put on heavy terms.

5. In the result, this petition will be allowed on payment of Rs.5,000/- (towards expenses of P.W.2) before the trial court on or before 06.01.2020, failing which, this petition shall stand dismissed without further reference to this court. If the petitioners have complied with the aforesaid conditions within the aforesaid time, the trial court is directed to re-call P.W.2 and give an opportunity to the petitioner to cross-examine the said witness. The petitioners are directed to cross-examine the said witness on her appearance before the trial court without seeking further adjournment.

5. With the aforesaid directions, this petition is disposed of.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



To

1. The Inspector of Police,
Panamadangai Police Station,
Vellore District.

2. The Sessions Judge Mahila Court,
Vellore

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Nirmalkrishnan, Advocate sr.105660

Cr1.OP.No.34048 of 2019

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