

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.30314 of 2018

Dhanasekaran

... Petitioner

-Vs-

The State, rep. by
Inspector of Police,
Mallur Circle,
Panamarathupatti Police Station,
Salem District.
Cr.No.36/2016

.... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to set aside the Order dated 16.11.2018 in CrI.M.P.No.1718 of 2018 in Spl.S.C.No.3/2017 on the file of Sessions Judge, Mahila Court, Salem, further direct the trial court to recall PW2 for cross examination.

For Petitioner : Mr.A.Padmanaban

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

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner under Section 311 of Cr.P.C., to recall and cross-examination of PW2.

2. The petitioner is facing trial before the Court below for an offence under Section 4 r/w 3 of the POCSO Act, 2012 and Section 506(1) of IPC. PW1 to PW3 were examined-in-chief on 03.09.2018. These witnesses were not cross-examined by the petitioner. Therefore, the petition came to be filed under Section 311 of Cr.P.C., to recall PW1 to PW3 for cross-examination.

3. The Court below on consideration of the entire materials on record, allowed the petition filed by the petitioner to recall PW1 and PW3 and dismissed the petition insofar as PW2 is

concerned, since she was a child victim. The Court below had dismissed the petition mainly on the ground that the child cannot be repeatedly asked to testify in the Court in view of the bar under Section 33(5) of the POCSO Act.

4. The learned counsel for the petitioner would submit that the petitioner is facing very serious charge under the POCSO Act and therefore, one opportunity must be given to the petitioner to recall and cross-examine PW2.

5. This Court has gone through the deposition of PW2. The legislature has thought it fit to curb the practice of calling the child repeatedly to the Court to testify and that is the reason why such a stringent provision has been made under Section 33 (5) of the POCSO Act. The child cannot be made to undergo the trauma again and again and it will leave a deep scar in the mind of the child. Going by the deposition made by the child (PW2), this Court is not inclined to expose the child again for cross-examination.

6. This Court does not find any illegality or infirmity in the order passed by the Court below. In the result, the Criminal Original Petition is dismissed. The Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

kal/ssr

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, Salem
2. The Inspector of Police,
Mallur Circle, Panamarathupatti Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.30314 of 2018

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