



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.12622 of 2019 and
Crl.M.P(MD).No. 7852 of 2019

Vijayaraghavan

...Petitioner

-Vs-

The State rep. by
The Inspector of Police,
All Women Police Station,
Thirunelveli.
(Crime No. 8/2017)

... 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 29.04.2019 passed in Cr.M.P.No. 1973 of 2019 in Special Case No. 83 of 2017 on the file of the I Additional District Sessions Judge, Mahila Court, Thirunelveli, Thirunelveli District and set aside the same and grant permission to recall prosecution witnesses No.1 to 13 for cross examination within a stipulated time.

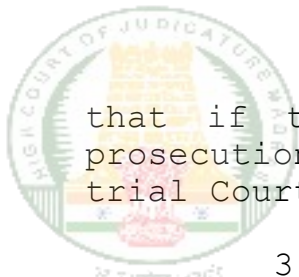
For Petitioner : Mr. R. Karunanidhi

For Respondent : Mr. K. Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No. 1973 of 2019 in Special Case No. 83 of 2017 on the file of the learned I Additional District and Sessions Judge, Mahila Court, Thirunelveli, Thirunelveli District, dated 29.04.2019, thereby, dismissing the application filed by the petitioner under Section 311 Cr.P.C., to recall the prosecution witnesses viz., PW.1 to PW.13 for the purpose of cross examination.

2. The learned counsel appearing for the petitioner would submit that the petitioner have committed the offences under Sections 9(m) and 10 of Protection of Children from Sexual Offences Act, 2012 and he could not be able to cross examine on the date of cross examination of prosecution witnesses. He further submitted



that if the petitioner is not permitted to cross examine the prosecution witnesses, he will not get a fair justice from the trial Court.

3. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that the petitioner has given enough opportunity to cross examine the prosecution witnesses. Since the prosecution have been cross examined on the various dates, even then, the petitioner failed to cross examine the prosecution witnesses. Further, PW.2 is a minor victim girl she could not be called for cross examination, thereby, he vehemently opposed to cross examine her.

4. I have heard the learned counsel appearing on either side and perused the materials available on record.

5. The petitioner is the sole accused. He has been charged under POCSO Act. After filing the charge sheet, the Sessions Court has taken cognizance in Spl.C.No.83 of 2017 and the prosecution witnesses were examined. On the date of cross examination, the petitioner failed to cross examine the prosecution witnesses. Therefore, he filed a petition to recall the witnesses and the same was rejected.

6. On perusal of the materials available on record, it is seen that PW.1 is complainant; PW.2 is a victim girl; PW.4 and PW.5 are the Mahazar Witnesses; PW.7 and PW.8 are Doctors and PW.13 is the investigating Officer.

7. Considering the facts and circumstances of the case, the petitioner may be given an one more opportunity to cross examine the prosecution witnesses viz., PW.1, PW.2, PW.4, PW.7, PW.8 and PW.13.

8. Accordingly, the order dated 29.04.2019 passed in Cr.M.P.No. 1973 of 2019 in Special Case No. 83 of 2017, by the learned I Additional District Sessions Judge, Mahila Court, Thirunelveli, Thirunelveli District is set aside and the petitioner is permitted to cross examine the PW.1, PW.2, PW.4, PW.7, PW.8 and PW.13 alone, on payment of cost of Rs.1,000/- to each of the witnesses except PW.2 and a sum of Rs. 5,000/- to PW.2 and also necessary charges. As far as examination of other witnesses are concerned this petition is dismissed. The Trial Court is directed to fix the date for recalling and cross examine those witnesses. If the petitioner fails to cross examine on the date fixed by the trial Court, the Trial Court is directed to proceed with the case in accordance with law.



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9. This Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Ad-I)

// True Copy //

Sub Assistant Registrar(CS)

Trp

To

1. The Inspector of Police,
All Women Police Station,
Thirunelveli.
- 2.I Additional District Sessions Judge,
Mahila Court, Thirunelveli, Thirunelveli District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.KARUNANIDHI, Advocate SR-86055.

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