



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **06.09.2019**

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.10615 of 2017
and
Crl.M.P(MD)No.7275 of 2017

State of Tamilnadu through
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

... Petitioner

Vs.

Santhosh Saran

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.198 of 2017 in Spl.S.C.No.4 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagercoil, allow this petition.

For Petitioner : Mr.M.Chandrasekaran
Additional Public Prosecutor

For Respondent : Mr.T.Lajapathi Roy

O R D E R

This petition has been filed by the State challenging the order passed by the Court below permitting the respondent to recall PW.1 for further cross examination.

2. The respondent is facing trial before the Court below for an offence under Sections 365, 323 of IPC., and under Section 8 of Protection of Children from Sexual Offences Act r/w Section 34 of IPC.

3. It is seen from the records that PW.1 is the victim child, who was aged about 13 years at the time of the incident. He was examined in chief by the prosecution on 23.05.2016. On that day, the respondent did not cross examine the witness. An application was filed under Section 311 of Cr.P.C. in Crl.M.P.No.730 of 2016 and the same was allowed by the Court below by order dated 02.09.2016. Thereafter, PW.1 was recalled and cross examined in detail, on 24.10.2016 and his evidence was also closed.



4. The Prosecution thereafter examined PW.2 and PW.3 and they were also cross examined, and the case was at the stage of examination of further prosecution witnesses. At this stage, the respondent has filed another application under Section 311 of Cr.P.C. to recall PW.1 for further cross examination and the Court below has allowed the application by imposing a condition to the respondent i.e., to pay a cost of Rs.2,000/- to PW.1.

5. The learned Additional Public Prosecutor appearing on behalf of the petitioner submitted that this is the second occasion where the respondent filed an application under Section 311 of Cr.P.C. to recall PW.1 for cross examination. He further submitted that the Court below did not take into consideration the mandate provided under Section 33(5) of the POCSO Act, wherein the Special Court should ensure that the victim child is not exposed to trial repeatedly. The learned Additional Public Prosecutor by bringing to the notice of this Court the facts involved in this case, submitted that the victim should not be made to suffer the harrowing experience again and again by exposing him to trial.

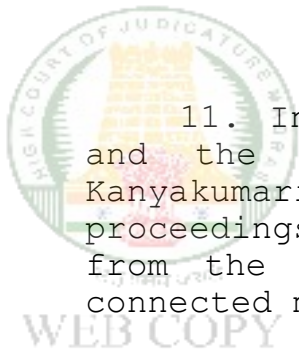
6. The learned counsel appearing on behalf of the respondent submitted that there are some important questions which are left out to be asked to PW.1 and therefore, one last opportunity may be given to the respondent to recall PW.1 for further cross examination.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The order passed by the Court below is patently illegal. The Court below, which is a special Court constituted under the Act has been specifically designated with certain powers under Chapter VIII of the Act. Section 33(5) of the Act mandates the Special Court to ensure that the child is not called repeatedly to testify by the Court. This mandate has been given a clear go by, by the Court below and the Court below has considered the application in the very routine manner.

9. It is also seen from the records that PW.1 has already been cross examined in detail and therefore, it is not in the interest of the victim boy to be exposed to trial again and again to recall the bad experience that he suffered.

10. This Court has no hesitation to interfere with the order passed by the Court below and accordingly, the order passed by the Court below in Crl.M.P.No.198 of 2017, dated 22.06.2017 is hereby set aside.



11. In the result, this Criminal Original Petition is allowed and the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagercoil, is directed to complete the proceedings in Spl.S.C.No.4 of 2015, within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Kanyakumari District at Nagercoil.
- 2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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CS(24.09.2019) 3P 4C