



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **06.09.2019**

CORAM:

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

WEB COPY

Crl.O.P.No.8904 of 2017
and
Crl.M.P(MD)No.6026 of 2017

Gopi @ Ganesan

... Petitioner / Petitioner

Vs.

The State rep.by
The Inspector of Police,
Peraiyur Police Station,
Madurai District.
(Crime No.8 of 2014)

... Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai in Crl.M.P.No.1850 of 2016 dated 13.03.2017.

For Petitioner : Mr.A.Uthayakumar

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

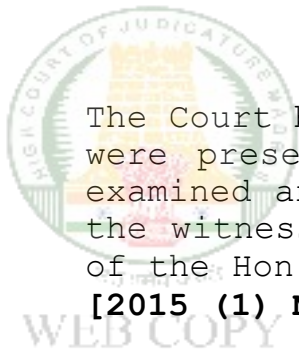
O R D E R

This petition has been filed against the dismissal of the application filed under Section 311 of Cr.P.C. to recall PW.1 to PW.4 for cross examination.

2. The petitioner is facing trial before the Court below for an offence under Sections 341, 506(i) of IPC., and Section 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (herein after referred to as 'POCSO Act').

3. The prosecution examined PW.1 to PW.4 and none of the witnesses were cross examined on the side of the petitioner. The petitioner therefore, filed an application under Section 311 of Cr.P.C., and sought for recalling these witnesses for cross examination.

4. This application was dismissed by the Court below by an order dated 13.03.2017 on the ground that PW.1 is the victim girl aged about 15 years and that she cannot be exposed before the Court repeatedly in view of the bar under Section 33 (5) of POCSO Act.



The Court below has further held that the petitioner and his counsel were present before the Court on the day when the witnesses were examined and in spite of the same, they choose not to cross examine the witnesses. Therefore, the Court below relied upon the judgment of the Hon'ble Supreme Court in **Vinoth Kumar Vs. State of Punjab**, in [2015 (1) MLJ (Cr1.) 288], and dismissed the application.

5. The learned counsel for the petitioner submitted that the petitioner is facing serious charges before the Court below and therefore, one opportunity can be given to the petitioner to recall the witnesses for cross examination. He further submitted that PW.1 to PW.4 were not able to be cross examined due to unavoidable circumstances and therefore, the petitioner should not be deprived of the opportunity to cross examine the witnesses.

6. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that there are absolutely no grounds to interfere with the order passed by the Court below. He further submitted that the petitioner as well as his counsel were present when PW.1 to PW.4 were examined in chief by the prosecution and for a reasons best know to the petitioner, these witnesses were not cross examined.

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

8. PW.1 to PW.4 were examined in chief by the prosecution on 01.01.2016 and the petitioner and his counsel were present in the Court on that day in the Court when they were examined in chief. The Court below has recorded on 01.12.2016 that the counsel representing the petitioner did not come forward to cross examine the witnesses.

9. As rightly held by the Court below, the trial in all Criminal Cases will have been conducted on a day today basis. It is more so in offence under the POCSO Act, since the Act contemplates the completion of the entire proceedings within a period of six months. It is not the convenience of the accused person or his counsel and they cannot be allowed to recall the witnesses on that Court. The Court below has rightly relied upon the judgment of the **Hon'ble Supreme Court in Vinothkumar Vs. State of Punjab** in this regard.

10. The POCSO Act specifically prohibits the victim of the crime to be exposed before the Court repeatedly. In this case, the victim girl was aged about 15 years. She has spoken about the entire incident. The victim girl cannot be made to remind herself of the harrowing experience again and again and that is the reason why Section 33 (5) of the POCSO Act, mandates the Special Court to ensure that the child victim is not repeatedly made to testify in the Court.



11. In view of the above, this Court does not find any illegality or infirmity in the order passed by the Court below, while dismissing the application to recall PW.1, who is the child victim in this case. The order is sustained insofar as PW.1 is concerned.

12. The petitioner, who is aged about 22 years is facing serious charges before the Court below. He should be given some opportunity to cross examine other witnesses in order to effectively defend himself in this case. This Court is, therefore, of the considered view that PW.2 to PW.4 can be recalled and the petitioner can be given an opportunity to cross examine those witnesses.

13. In view of the above, the order passed by the Court below in Crl.M.P.No.1850 of 2016, dated 13.03.2017, is hereby set aside insofar as PW.2 to PW.4 are concerned.

14. The Court below is directed to issue summons to PW.2 to PW.4 and fix a date for their appearance. On the day of their appearance, the petitioner shall cross examine them and complete the cross examination on the same day. If for any reason, the petitioner fails to cross examine the witnesses on the date of their appearance, the petitioner shall forfeit his right to recall the witnesses in future. The petitioner is directed to pay cost of Rs.500/- to each of the witnesses on the date of their appearance.

15. It is also made clear that the petitioner shall cross examine all the other witnesses, to be examined by the prosecution, on the same day they are examined in chief.

16. In the result, this Criminal Original Petition is partly allowed to the extent indicated herein above and the learned Sessions Judge, Mahalir Neethimandram, Madurai, is directed to complete the proceedings in Spl.S.C.No.29 of 2015, within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Sessions Judge,
Mahalir Neethimandram, Madurai.



2.The Inspector of Police,
Peraiyur Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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and
Crl.M.P(MD)No.6026 of 2017
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vsd

JM/04.10.2019/4P/4C