



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Cr1.O.P. (MD) .No.18722 of 2019
and
Cr1.M.P. (MD) .No.10998 of 2019

Anbarasan ..Petitioner/Accused No.1
Vs.

State represented by,
The Inspector of Police,
All Women Police Station,
Pudukkottai.
(in Crime No.6 of 2018).

... Respondent/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records of the order dated 01.10.2019 passed by the learned Sessions Judge, Mahila Court, Pudukkottai in Cr.M.P.No.607 of 2019 in Spl.S.C.No.25 of 2018 and set aside the same and permit the petitioner to recall PW2.

For Petitioner : Mr.C.Arul Vadivel @ Sekar

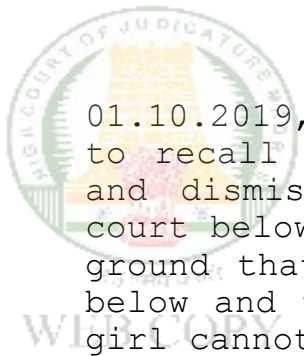
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed to set aside the order dated 01.10.2019 passed by the learned Sessions Judge, Mahila Court, Pudukkottai in Cr.M.P.No.607 of 2019 in Spl.S.C.No.25 of 2018 and permit the petitioner to recall the witness PW2/Victim girl, for cross examination.

2.The petitioner is the first accused in Spl.S.C.No.25 of 2018 pending on the file of the learned Sessions Judge, Mahila Court, Pudukkottai facing trial for the offence Under Sections 9(f), 9(m), 9(1), 10 and 17 of Protection of Child from Sexual Offences Act, 2012 and Section 506(i) of IPC.

3.The petitioner had filed a petition in Cr1.M.P.No.607 of 2017 in Spl.S.C.No.25 of 2018 seeking to recall the witnesses P.W.1, P.W.2, P.W.18, P.W.20, P.W.21 and P.W.22 for cross examination. The learned Sessions Judge, Mahila Court, Pudukkottai, by order dated



01.10.2019, partly allowed the petition and permitted the petitioner to recall the witnesses P.W.1, P.W.18, P.W.20, P.W.21 and P.W.22 and dismissed the petition in respect of P.W.2/victim girl. The court below had dismissed the application in respect of P.W.2 on the ground that P.W.2 / victim girl was already examined by the Court below and that as per Section 33(5) of POCSO Act, 2012, the victim girl cannot be recalled repeatedly to testify in the Court.

4.The learned counsel appearing for the petitioner would submit that the petitioner is facing very serious allegation before the Court below and that there is also a statutory presumption against the petitioner. P.W.2 is a main witness. P.W.2 was examined in chief on 21.08.2019 and during the examination of P.W.2 / Victim girl, the petitioner was in prison and that he was unable to properly instruct his counsel and unless and until the petitioner is granted one more opportunity to cross examine P.W.2/victim girl, without prejudice caused to the petitioner.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that the Court below has given cogent reason for dismissing the application filed by the petitioner and there is absolutely no ground to interfere with the same.

6.This Court perused the records, it is seen that P.W.2 was examined in chief on 21.08.2019, while the petitioner was in jail. The trial Court taking into consideration Section 33(5) of the POCSO Act, 2012, has dismissed the petition in respect of P.W.2.

7.I do not find any infirmity or illegality in the order passed by the trial Judge. The trial Judge has rightly dismissed the petition in so far as P.W.2 is concerned. However, it is a case where the petitioner is facing serious charges under the POCSO Act. Further, on the date of examination of P.W.2, the petitioner was in prison and thereby, he was also unable to properly instructed his counsel.

8.This Court is of the opinion that one more opportunity can be given to the petitioner to recall and cross examine the P.W.2/victim girl in the interest of justice and fair trial of defend his case in an effective manner.

9.This Court on the earlier hearing directed the Additional Public Prosecutor to get instructions from the respondent whether they will able to produce the P.W.2/Victim girl on the next hearing date.

10.The learned Additional Public Prosecutor on instructions submitted that P.W.2 / victim girl is undergoing examination during the next week and that they will able to produce P.W.2/Victim girl for cross examination on 31.12.2019. It is also brought to the



the petitioner under Section 313 Cr.P.C.

11.This Court is of the opinion that P.W.2 can be allowed to be recalled for cross examination on terms and imposition of Cost.

12.In view of the same, the order dated 01.10.2019 passed by the learned Sessions Judge, Mahila Court, Pudukkottai in Cr.M.P.No.607 of 2019 in Spl.S.C.No.25 of 2018 dismissing the recall petition in so far as P.W.2 is set aside. The respondent shall produce P.W.2 before the trial Court on 31.12.2019. The petitioner shall deposit a sum of Rs.5,000/- towards cost on the next hearing date before the trial Court to be paid to the father/Mother of P.W.2/victim girl accompanying her the Court on 31.12.2019. The petitioner shall file an undertaking affidavit that P.W.2 will be cross examined on the same day without fail. In the event of failure to cross examine P.W.2, the petitioner shall loose his chance to cross examine her any further. The petitioner shall also pay a sum of Rs.2,500/- to the Legal Services Authority attached to the Concerned trial Court. The questioning of the petitioner under Section 313 Cr.P.C can be deferred till 31.12.2019.

13.With the above direction, this criminal original petition is disposed of. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

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

+1 CC to M/s.C.ARUL VADIVEL@SEKAR, Advocate (SR-104922[F]

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kmg (CO)

TR(16.12.2019) 3P 5C

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