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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2020

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.513 of 2020

Vijayakumar

... Petitioner/Accused

Vs.

The State rep by
The Inspector of Police,
VV-18, All Women Police Station,
M.K.B.Nagar, Chennai -39.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order in Crl.M.P.No.15202 of 2019 in S.C.No.243 of 2018 order dated 03.09.2019 passed by the learned Court of Sessions, Mahila at Chennai.

For Petitioner :Mr.M.Anandaraj

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

O R D E R

This petition has been filed by the accused to set aside the order passed by the Sessions Judge, Mahila Court, Chennai in Crl.M.P.No.15202 of 2019 in S.C.No.243 of 2018 dated 03.09.2019.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Section 366 (A) of IPC & 6 of POCSO Act. He further submitted that during trial on the side of the prosecution P.W.1



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to P.W.7 were examined on 01.10.2018 and on that date, the petitioner's counsel did not cross examine the said witnesses and hence the petitioner has changed his counsel and filed a petition to recall P.W.1 to P.W.7. He further submitted that the learned Trial Court Judge has allowed the said application in respect of P.Ws. 2, 3, 4, 6 and 7, however she dismissed the petition with regard to the P.Ws. 1 and 5. He further submitted that the learned Trial Judge has dismissed the petition on the ground that as per Section 33 (5) of POCSO Act, the Special Court shall ensure that the victim child should not be called to the Court repeatedly for giving evidence. He further submitted that P.W.1 has admitted in her chief examination that she is aged about 18 years, so on the date of examination in chief before the Trial Court, she was not a child and hence the aforesaid provision will not apply. He further submitted that so far as P.W.5 is concerned the learned Trial Court Judge has dismissed the petition on the ground that the said witness was already cross examined and he further submitted that now the petitioner has filed the present petition to set aside the order passed by the Trial Court against the dismissal of the petition with regard to P.W.1 alone. He further submitted that since the said witness is a material witness, an opportunity may be given to the petitioner to cross examine the said witness or otherwise the petitioner will put to irreparable loss.

4. Per Contra, the learned Additional Public Prosecutor has submitted that already sufficient opportunity was given to the petitioner to cross examine P.W.1, but the petitioner has not availed the said opportunity and taking into consideration of the said fact, the Trial Court has rightly dismissed the petition with regard to P.W.1 and in the said order this Court need not interfere.

5. Considering the charges being faced by the petitioner, this Court is inclined to give one more chance to the petitioner to cross examine P.W.1 by imposing stringent conditions.

6. In the result, this criminal original petition will be allowed on deposit of Rs.6,000/- towards expenses to P.W.1 before the Trial Court on or before 23.01.2020, failing which, the petition shall stand dismissed without further reference to this court. In case, the petitioner has complied with the aforesaid condition within the aforesaid period, the trial court is directed to recall P.W.1 and give an opportunity to the petitioner to cross examine the said witness. The petitioner is directed to cross examine the said witness on her appearance without seeking any further adjournment.



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7. With the aforesaid directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court, Chennai.
- 2.The Inspector of Police,
VV-18, All Women Police Station,
M.K.B.Nagar, Chennai -39
- 3.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.M.Anandaraj, Advocate SR.2515

CRL.O.P.No.513 of 2020

NRJK(CO)
CB(20/01/2020)