



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.1043 of 2020
and MP.No.638 of 2020

M.Gokulakannan

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
W-18, All Women Police Station,
MKB Nagar, Chennai 600 039.
(Crime No.1 of 2016)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order of dismissal in part by the Trial Court in Crl.MP.No.5914 of 2019 dated 26.04.2019 by allowing this Criminal Original Petition.

For Petitioner :Mr.S.Ambedkumar

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.MP.No.5914 of 2019 in S.C.No.280 of 2017 dated 26.04.2019.

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 6 of the POCSO Act and Section 313 of IPC. He further submitted that on the side of the prosecution, P.W.1 to P.W.11 were examined in chief and since on that day petitioner's counsel was not feeling well and he could not appear and cross examine those witnesses and hence the petitioner has filed two applications under section 311 Cr.P.C. in Crl.MP.Nos.5913 & 5914 of 2019 in S.C.No.280 of 2017 to recall P.W.1, P.W.2, P.W.9 to P.W.11. He further submitted that though the Trial Court has



allowed Crl.M.P.No.5913 of 2019 and permitted the petitioner to cross examine P.W.1, P.W.2, P.W.9 to P.W.11, he dismissed the petition in Crl.M.P.No.5914 of 2019 in respect of recalling P.W.2, on the ground that the said witness is the victim girl and she cannot be frequently called to give evidence. He further submitted that P.W.2 is aged about 20 years and hence he requests to give an opportunity to the petitioner to cross examine the said witness.

4. Per contra, the learned Additional Public Prosecutor has submitted that as per Section 33(5) of the POCSO Act, the victim girl cannot be called repeatedly to give evidence and hence, the Trial Court has rightly dismissed the petition with regard to P.W.2 and in the said order, this court need not interfere.

5. Taking into consideration, the charges being faced by the petitioner and also the submissions made by the learned counsel for the petitioner that now P.W.2 has attained majority, this Court is inclined to allow this petition by imposing stringent condition.

6. In the result, this petition will be allowed on deposit of Rs.5,000/- before the Trial Court towards expenses to P.W.2 on or before 29.01.2020, 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.2 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.

7. With the aforesaid directions, this Criminal Original Petition is allowed. Consequently, Connected Crl.M.P.No.638/2020 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



To

WEB COPY

1. The Inspector of Police,
W-18, All Women Police Station,
MKB Nagar, Chennai 600 039.

2. The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Ambedkumar, Advocate sr.3704

CRL.O.P.No.1043 of 2020
and MP.No.638 of 2020

rsk(co)
nr 22/01/2020