



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.2826 of 2020

and

CRL.M.P.No.1701 of 2020

Jayaprakash

... Petitioner/Accused

Vs.

The State rep by
The Inspector of Police,
W.20, All Women Police Station,
Chennai.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.96 of 2019 (Crl.M.P.No.28553 of 2019) and set aside the order passed by the Trial Court in Crl.M.P.No.28553 of 2019 in S.C.No.96 of 2019 dated 27.01.2020 and direct the Trial Court to allow the petition under 311 Cr.P.C to recall PW1, victim.

For Petitioner : Mr. V.Balu

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, Special Court for Exclusive Trial of cases under the POCSO Act, Chennai in Crl.M.P.No.28553 of 2019 in S.C.No.96 of 2019 dated 27.01.2020.

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 a teacher and he is facing trial for the alleged offence punishable under Sections 8 and 12 of the POCSO Act. He further submitted that on 08.11.2019, the victim girl was examined-in-chief as P.W.1 and on that date the petitioner's counsel did not appear before the Court and hence P.W.1 was not cross examined. He further submitted that the petitioner has engaged a new counsel and filed a petition under Section 311 of Cr.P.C on 20.12.2019 but the learned Trial Court Judge without



giving an opportunity to the petitioner to cross-examine the said witness, has dismissed the said petition. He further submitted that since the petitioner is facing serious charges, an opportunity may be given to the petitioner to cross-examine the said witness or otherwise the petitioner will be put to irreparable loss.

4. Per Contra, the learned Additional Public Prosecutor has submitted that under Section 33 (5) of POCSO Act, the Trial Court shall ensure that the child has not been recalled to testify before court and hence, taking into consideration of the same, the Trial Court has dismissed the petition and therefore he prayed to dismiss this petition.

5. The learned counsel for the petitioner by way of reply has submitted that victim girl is now aged about 19 years old and hence he requests to give one more opportunity to the petitioner to cross-examine the aforesaid witness.

6. Though the petitioner has not stated any valid reason for not cross-examining P.W.1 on the date of examination-in-chief, considering the charges being faced by the petitioner and that the aforesaid witness is a material witness, in order to give one more opportunity to the petitioner, this Court is inclined to allow this petition by imposing stringent conditions.

7. In the result, this criminal original petition will be allowed on deposit of Rs.10,000/- towards expenses to P.W.1 before the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Chennai on or before 19.02.2020, 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.

8. With the aforesaid directions, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar



To

1. The Session Judge,
Special Court for Exclusive
Trial of cases under POCSO Act,
Chennai.
 2. The Inspector of Police,
W.20, All Women Police Station,
Chennai.
 3. The Public Prosecutor,
Madras High Court,
Chennai.
- +1 CC to Mr.V. Balu, Advocate sr 10626.

CRL.O.P.No.2826 of 2020
and
Crl.M.P. No. 1701 of 2020

KJ(CO)
SP(12/02/2020)