

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5185 of 2020

and

Crl.M.P.No.2953 of 2020

Mathankumar

.. Petitioner

Vs

State rep by

The Inspector of Police,

AWPS, Tharamangalam,

Salem District.

(Crime No.643 of 2015)

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside order dated 04.02.2020 passed by the learned Sessions Judge, POCSO Court, Salem in CMP.No.35/2020 in Old Spl.S.C.No.7 of 2016 in new Spl.S.C.No.18 of 2019 on the file of the Sessions Judge, POCSO Court, Salem and allow the petition filed u/s 311 Cr.P.C to recall the witnesses (PW1 Palanisamy, P.W.2 Punithavalli, P.W.3 pappan, P.W.7 Dr.A.R.Nirmala, P.W.12 Raji for cross examination).

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

The petition has been filed to set aside order dated 04.02.2020 passed by the learned Sessions Judge, POCSO Court, Salem in CMP.No.35/2020 in Old Spl.S.C.No.7 of 2016 in new Spl.S.C.No.18 of 2019 on the file of the Sessions Judge, POCSO Court, Salem and allow the petition filed u/s 311 Cr.P.C to recall the witnesses (PW1 Palanisamy, P.W.2 Punithavalli, P.W.3 pappan, P.W.7 Dr.A.R.Nirmala, P.W.12 Raji for cross examination).

2.The trial Court, by impugned order, dismissed the application filed by the petitioner under Section 311 of Cr.P.C to recall the prosecution witness P.W.1 to P.W.3, P.W.7, P.W.12. The petitioner has been charged for the offence under Section 366 (a) of the IPC read with 4 of the POCSO Act and also charged for the offences under Sections 363, 366 of IPC, Section 9 of

Protection of Child Marriage Act and section 6 r/w 5 (1) of POCSO Act.

3.The prosecution has examined P.W.1 to P.W.12 out of 17 witnesses. Now the case is posted for the evidence of the investigation officer. Admittedly, the petitioner did not cross examine the prosecution witnesses on the day they were examined in chief.

4.The learned Additional Public Prosecutor submitted that out of 12 witnesses, P.W.9 and 10 have already turned hostile.

5.In the considered view of this Court, since the petitioner is facing very serious charges, he needs to be given an opportunity to prove his defence by the way of cross examination. Though, this Court is not inclined to allow this petition in full, the petitioner may be given one more opportunity to cross examine the victim girl P.W.2.

6.In view of the above, the impugned order is set aside to the extent that the petitioner is permitted to cross examine P.W.2/victim girl alone on the date fixed by the trial Court, on payment of necessary charges. If the petitioner fails to cross examine P.W.2/victim girl on the date fixed by the Trial Court, the Trial Court is directed to proceed with the trial in accordance with law.

7.The Criminal Original Petition is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.S.VII)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge, POSCO Court, Salem.
- 2.The Inspector of Police,AWPS, Tharamangalam, Salem District.
- 3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate Sr.No.19825

AKM/09.03.2020 /2P-5C/

Crl.O.P.No.5185 of 2020
and Crl.M.P.No.2953 of 2020