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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5259 of 2020

and

Crl.MP.No.3001 of 2020

Nanjappan

... Petitioner/
Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Perur, Coimbatore.

...Respondent/
Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the order passed in CMP.No.23 of 2020 in Spl.C.C.No.35 of 2019, dated 11.02.2020, on the file of the Special Court for Exclusive Trial of cases under POCSO Act at Coimbatore and set aside the same.

For Petitioner : Mr.V.Sivakumar

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

ORDER

This Criminal Original Petition has been filed challenging the order passed in CMP.No.23 of 2020 in Spl.C.C.No.35 of 2019, dated 11.02.2020, on the file of the Special Court for Exclusive Trial of cases under POCSO Act at Coimbatore.

2 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the materials placed on record.

3 The petitioner is the sole accused. On the complaint lodged by the defacto complainant, a case has been registered in



FIR.No.9 of 2018 under Sections 5(m) & 6 of POCSO read with Section 506(1) of IPC as against the petitioner herein. After completion of investigation, the respondent has filed final report and the same has been taken cognizance by the Trial Court in Special CC.No.35 of 2019. The Doctor, who has treated the victim girl, was examined as PW10. While, examining PW10/doctor, some of the documents were not marked in respect of treatments given to the victim girl on 19.03.2018 and 26.10.2018. Since, the said documents are required for trial, the prosecution has filed a petition to recall PW10 and to mark those documents.

4 The learned counsel appearing for the petitioner submitted that the prosecution has completed the entire evidence and has argued on the defence side. At the time of the arguments, the defence side submitted that for treating the victim girl, the prosecution did not mark any document to prove the evidence of PW10. Therefore, only to fill up the lacuna, the prosecution has now filed petition to recall PW10 to mark the treatment records of the victim girl on 19.03.2018 & 26.10.2018. Further, the learned counsel submitted that the Trial Court without considering the law laid down by the Hon'ble Supreme Court of India, mechanically allowed the application. In this regard, he has also relied upon the judgment reported in 2013 CRL. L. J 3777 - Rajaram Prasad Yadav Vs. State of Bihar and another.

5 The learned Additional Public Prosecutor would submit that admittedly, the victim girl was treated by PW10 on 19.03.2018 and 26.10.2018, which was categorically admitted by PW10. Since, it was not in the Court bundle and as prosecution was not able to mark the treatment records of the victim before the Court below at the relevant point of time, the same would not amount to filling up of the lacuna. Therefore, prayed for dismissal of the petition.

6 Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

7 On the perusal of the records, it appears that the doctor who was treated the victim has been examined as PW10 and he has categorically deposed that on 19.03.2018 and 26.10.2018, the victim girl was treated by him and on his direction, again she was directed to be present for medical examination within a period of one week. But thereafter, the victim girl was brought before the doctor on 26.10.2018. Admittedly, the victim girl was treated by PW10 on 19.03.2018 and 26.10.2018. Therefore, the prosecution is entitle to mark the documents in respect of



treatment of the victim girl by PW10 on 19.03.2018 and 26.10.2018, it would not amounts to cause any prejudice to the petitioner/accused. Therefore, this Court finds no irregularity or infirmity in the order passed by the Trial Court.

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8 Accordingly, this Criminal Original Petition stands dismissed. However, the prosecution is permitted to mark those documents subject to the objection and cross-examination by the petitioner/accused. The Trial Court is directed to complete the Trial within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court for Exclusive
Trial of cases 'Posco'Act, Coimbatore.

2.The Inspector of Police,
All Women Police Station,
Perur, Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Sivakumar, Advocate SR.19962

Cr1.O.P.No.5259 of 2020

LN(CO)
CB(10/07/2020)