

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 14060 of 2020

Sakthivel,
S/o. Manickam @ Eluthiyavar Kondan,
Kaduvetti, Thottiyam Taluk,
Trichy District.

Now at residing at
Maniyaran Thottam,
Meenakshipalayam,
Paramathivellur Taluk,
Namakkal District.

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Velur Police Station,
Namakkal District.
(Crime No.277 of 2016)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 14.07.2020 passed in C.M.P.No.250 of 2020 in Spl.C.C.No.37 of 2016, on the file of learned Sessions (Fast Track Mahila) Judge, Namakkal and to allow the Criminal Original Petition.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

This petition has been filed seeking a direction to set aside the order dated 14.07.2020 passed in C.M.P.No.250 of 2020 in Spl.C.C.No.37 of 2016, on the file of learned Sessions (Fast Track Mahila) Judge, Namakkal.

2.The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused in Crime No.277 of 2016 for the charges under Sections 366(A) of IPC, Section 9 of

PCM Act and Section 3 r/w.4 of POCSO Act. So far as the prosecution have examined P.W.1 to P.W.5, the petitioner's counsel could not able to cross examine the prosecution witnesses. Therefore, the petitioner filed a petition to recall P.W.1 to P.W.5 for cross examination. He further submitted that the petitioner may be given one more opportunity to put forthwith his case by cross examining P.W.1 to P.W.5.

3.The Learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner has been charged for the offence under Sections 366(A) of IPC, Section 9 of PCM Act and Section 3 r/w.4 of POCSO Act and the case was taken on file in Spl.C.C.No.37 of 2016. After taking cognizance, the prosecution have examined P.W.1 to P.W.5 on 06.02.2017 itself. On that day the petitioner failed to cross examine the prosecution witnesses P.W.1 to P.W.5. After a period of three years the petitioner filed a petition under Section 311 of Cr.P.C to recall P.W.1 to P.W.5. The trial Court rightly dismissed the petition by relying upon the Judgement of the Hon'ble Supreme Court of India in 2015(3) SCC 220, (Vinod Kumar Vs State of Punjab).

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

5.It is seen that the petitioner is a sole accused and charged for the offences under Sections 366(A) of IPC, Section 9 of PCM Act and Section 3 r/w.4 of POCSO Act. The prosecution have examined P.W.1 to P.W.5 on 06.02.2017 the petitioner could not able to cross examine. Even thereafter, the petitioner has not chosen to file any application for recall of P.W.1 to P.W.5 for the past three years. The petitioner filed an application under Section 311 of Cr.P.C only on 16.03.2020. Since the petitioner did not cross examine any of the prosecution witnesses, he may be given one more opportunity to cross examine the prosecution witnesses. The victim girl now attained majority and also got married with some other person and she was examined as P.W.2.

6.Considering the facts and circumstances, the impugned order passed in C.M.P.No.250 of 2020 in Spl.C.C.No.37 of 2016 is set aside against P.W.2 only. The petitioner is permitted to cross examine the P.W.2 alone on the date fixed by the trial Court on payment of Rs.5000/- to P.W.2 as cost. If the petitioner fails to cross examine P.W.2 on the date fixed by the trial Court, the trial Court is directed to proceed with the case and pass orders on merits in accordance within a period of three months from the date of receipt of this order.

7.With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions (Fast Track Mahila) Judge,
Namakkal.
2. The Inspector of Police,
Velur Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.W.Camyles Gandhi, Advocate in SR.NO..29395

Crl.O.P.No.14060 of 2020

ssd(co)
rv(30/9/2020)



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