

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

CRL.O.P.NO.16807 OF 2020

&

CRL.M.P. NO.6492 OF 2020

K.Venkatesh

...Petitioner/Accused

Vs.

The State

Rep.by the Inspector of Police

W6 All Women Police Station,

Ayanavaram, Chennai - 600 023.

...Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 271 of Cr.P.C. to set aside the order made in Crl.M.P.No.506 of 2020 in S.C.No.183 of 2018 dated 24.09.2020 on the file of Mahila Court, Chennai.

For Petitioner : Mr.A.Punithavanan

For Respondent : Ms.M.Prabhavathi

Additional Public Prosecutor

WEB ORDER COPY

Seeking to set aside the order passed in Crl.M.P.No.506 of 2020 in S.C.No.183 of 2018 on the file of the Sessions Judge for exclusive trial of cases under POCSO Act, Chennai, the criminal original petition has been laid by the petitioner.

2.Crl.M.P.No.506 of 2020 has been preferred by the petitioner to recall PWs 2, 3, 5 & 6 for the purpose of further cross examination and also to issue subpoena to the Forensic Examiner Ms.Deepa for proper adjudication in the matter.

3.The abovesaid petition preferred by the petitioner has been resisted by the respondent contending that already PWs 2, 3, 5 & 6 have been cross examined by the petitioner and without any valid cause / reason, the petitioner cannot seek to recall all the abovesaid witnesses for further cross examination and the same would cause immense inconvenience to the witnesses and further, it is put forth that the report of Forensic Expert has been marked as Ex.P12 through PW6, the Investigation officer and the same could be used as evidence under Section 293 Cr.P.C without examining the Forensic Expert. Thus, according to the respondent, the petition preferred by the petitioner merits no acceptance and liable to be dismissed.

4.Considering the facts projected by the petitioner and the respondent and on a perusal of the records, the court below was pleased to dismiss the petition preferred by the petitioner. Impugning the same, the criminal original petition has been laid by the petitioner.

5.It is contended by the petitioner's counsel that the further cross examination of PWs 2 , 3, 5 & 6 is essential and therefore, they should have been recalled by the Court below for enabling the petitioner to cross examine them. However, as rightly held by the Court below, when the petitioner has not assigned any valid or acceptable reason for the purpose of recalling PWs 2, 3, 5 & 6 and when it is noted that PWs 2, 3, 5 & 6 had been already cross examined by the petitioner in detail, in such view of the matter, as rightly held by the Court below, the petitioner would not be entitled

to recall the witnesses already cross-examined at his whims and fancies and without proper reason/ cause. No witness can be recalled for the purpose of examination / cross examination unless proper reasons/cause is assigned. Therefore, the Court below, has rightly held that the petition is bereft of reasons for recalling PWs 2, 3, 5 & 6 and the court below is thus justified in dismissing the petition.

6.As regards the other relief sought for by the petitioner for issuing subpoena to the scientific expert, when it is noted that the Forensic report filed by the scientific expert has been already exhibited through the investigation officer PW6 as Ex.P12 and when the same is not challenged by the petitioner as such, as rightly held by the Court below, the report of the scientific expert can be received in evidence straightaway without examining the scientific expert. In such view of the matter, when there is no dispute about the genuineness of the scientific report as such, when the Court below has already received the same in evidence as Ex.P12, as rightly determined by the Court below, no purpose would be served by summoning the scientific expert for repeating the facts mentioned in the report. The report speaks for itself and therefore, the Court below is justified in rejecting the abovesaid request put forth by the petitioner for summoning the scientific expert.

In the light of the abovesaid discussions, I do not find any infirmity or error in the impugned order and the court below, for just and convincing reasons, has rightly dismissed the petition preferred by the petitioner. Resultantly, the criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

1. Mahila Sessions Court,
Chennai.

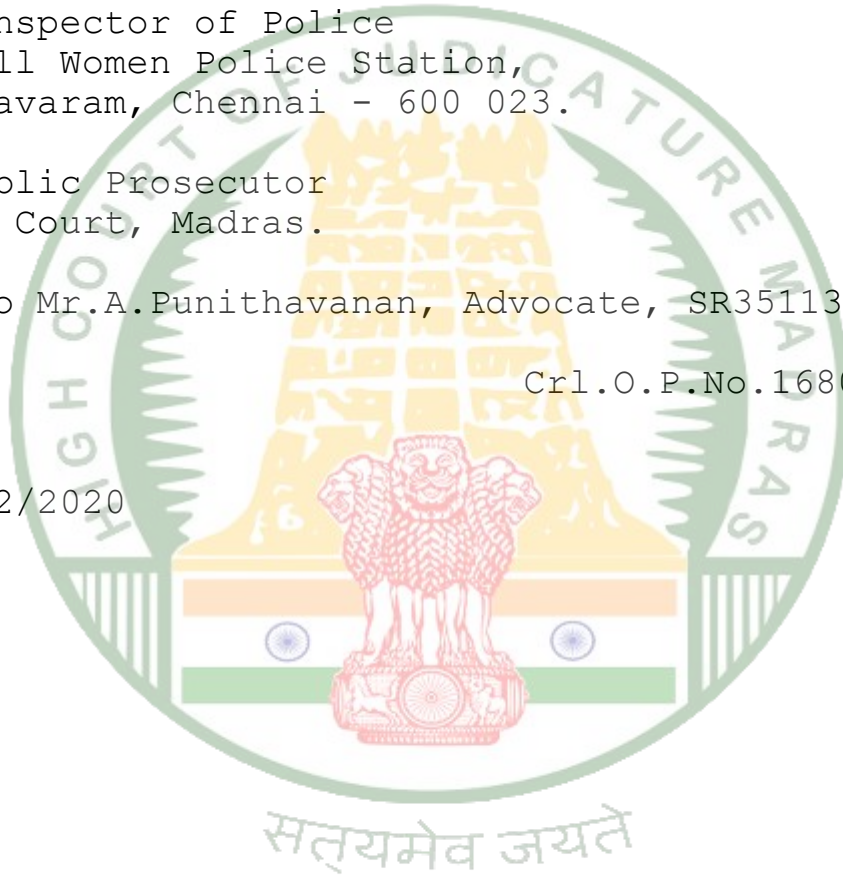
2. The Inspector of Police
W6 All Women Police Station,
Ayanavaram, Chennai - 600 023.

3. The Public Prosecutor
High Court, Madras.

+2cc's to Mr.A.Punithavanan, Advocate, SR35113

Cr1.O.P.No.16807 of 2020

CO (KJ)
BDL 19/12/2020



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