

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

Crl.O.P.No. 18857 of 2020

and

Crl.M.P. No.7450 of 2020

Annadurai
S/o. Veeran

... Petitioner

Vs.

State rep. by
The Inspector of Police
AWPS (All Women Police Station)
Mettur
Crime No.7 of 2017

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order dated 28.02.2020 in Crl. M.P. No.74 of 2020 in Old SSC No.39/2018, New SSC No.91/2019 passed by the learned Special Sessions Judge, Special Court exclusive trial of cases under POCSO Act, Salem.

For Petitioner : Mr. M.G. Udayashankar

For Respondent : Ms. M. Prabhavathi

Additional Public Prosecutor

O R D E R

Assailing the order dated 28.02.2020 passed in Crl. M.P. No.74 of 2020 in Old SSC No.39/2018 and New SSC No.91/2019, on the file of the Special Court, exclusive trial of cases under POCSO Act, Salem, this Criminal Original Petition has been preferred by the petitioner/accused.

2. The Crl. M.P. No.74 of 2020 has been preferred by the petitioner/accused under Section 311 Cr.PC for recalling P.Ws.1 to 4 and P.Ws.9 and 10 for cross examination.

3. The only reason adduced by the petitioner for recalling the abovesaid witnesses is that, due to unavoidable reason his counsel was unable to cross examine them and the petition filed to defer cross examination of P.Ws.1 to 3 was also dismissed by the court below and hence sought for the relief prayed by him.

4. The respondent resisted the abovesaid petition preferred by the petitioner contending that the

petitioner/accused has not endeavoured to cross examine the abovesaid witnesses and as per Sections 33(5) and 33(6) of POCSO Act, the victim girl should not be harassed unnecessarily in the court proceedings at the instance of the accused by calling her for cross examination and also contended that the Supreme Court has laid the law that the witnesses should be immediately cross examined after the chief examination is over and no adjournment should be sought for the cross examination of the witnesses and hence contended that the petition has been laid by the petitioner only to delay the proceedings endlessly and prayed for the dismissal of the petition.

5. The Court below, on a consideration of the rival contentions put forth by the parties concerned, was pleased to dismiss the petition. Impugning the said order, this Criminal Original Petition has been laid by the petitioner/accused.

6. Considering the materials placed on record, it is found that when the matter has reached the stage of examination of the defence witnesses, the petition has come to be laid by the petitioner/accused for recalling P.Ws.1 to 4 and P.Ws.9 and 10 for cross examination. Absolutely no reason has been averred in the petition as to why the petitioner has not endeavoured to cross examine the abovesaid witnesses at the time when they were examined by the Court. It is further noted that the petition to defer cross examination of P.Ws.1 to 3 was dismissed by the court below. As rightly held by the court below, the prosecution witnesses should be cross examined then and there without seeking for any adjournment unless their cross examination could not be conducted for sound reasons on the particular date when they were examined. Insofar as this case is concerned, as above noted, no plausible reason has been averred by the petitioner as to why he had not endeavoured to cross examine the witnesses when they were examined in the court below. In such view of the matter, as rightly held by the court below, even in the present petition, the petitioner is unable to cite any reason as to why he needs recalling of the abovesaid witnesses for cross examination and why he had not endeavoured to cross examine the abovesaid witnesses on the dates when they were examined in the court. Further as rightly held by the court below, P.W.2, being the victim child, has to be protected as provided under Sections 33(5) and 33(6) of POCSO Act, and she cannot be summoned by the accused at his whims and fancies. When it is noted that the defence counsel was very much present on the date when P.Ws.1 to 4 were examined, despite the abovesaid position, when the defence had not taken any earnest endeavour to cross examine the abovesaid witnesses and also P.Ws.9 and 10, in such view of the matter, as rightly held by the court below, the petitioner is bereft of any valid reason and accordingly dismissed the petition.

find any error or infirmity in the impugned order passed by the court below.

8. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Bga

To

1. The Special Sessions Judge,
Special Court exclusive trial of cases
under POCSO Act, Salem.
2. State rep. by
The Inspector of Police
AWPS (All Women Police Station)
Mettur
Crime No.7 of 2017
3. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.O.P.No.18857 of 2020

NRL (CO)
GN(29/12/2020)

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