



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM  
CRL.O.P.No.34635 of 2019

Karuppusamy

... Petitioner/Accused

Vs.

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

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 13.12.2019 in Crl.M.P.No. 649 of 2019 in Spl.C.C.No. 47 of 2018 and direct the Session Judge, Magalir Neethimandaram, (Mahila Court) Coimbatore to recall the PW-1 for the purpose of cross examination.

For Petitioner :Mr.M.N.Balakrishnan

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

O R D E R

This petition has been filed by the accused to set aside the order passed by the Sessions Judge, Magalir Neethimandaram, (Mahila Court) Coimbatore in Crl.M.P.No. 649 of 2019 in Spl.C.C.No.47 of 2018 dated 13.12.2019.

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

3. The learned counsel for the petitioner has submitted that the petitioner is facing trial for the alleged offences under Section 366 of IPC Section 5(i) & 6 of Protection of Children from Sexual Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006. He further submitted that on 22.07.2019 P.W.1 was examined and thereafter on the side of the prosecution, five witnesses were examined. He further submitted that since the petitioner's counsel was out of station, those witnesses were not cross examined when they were examined in chief before the Court and hence the petitioner has filed Crl.M.P. No.649 of 2019 under Section 311 of Cr.P.C to recall



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the aforesaid witnesses for the purpose of cross examination. He further submitted that the learned Trial Court Judge has partly allowed the said application with regard to P.Ws. 2 to 6 on payment of cost of Rs.1000/- each of the witnesses, but dismissed the petition against the P.W.1. He further submitted that since the PW.1 is a material witness, unless an opportunity is given to the petitioner to cross examine the said witness, it will cause irreparable loss to the petitioner, and hence he prayed to set aside the order passed by the learned Trial Court Judge with regard to the dismissing the petition against PW.1.

4. The learned Additional Public Prosecutor has submitted that on 22.07.2019 P.W.1 was examined in chief and thereafter on different dates seven witnesses were examined as PW.2 to PW.8 and all those hearings, the petitioner has not come forward to cross examine the said witnesses and after waiting for several months, he has filed a Crl.M.P.No. 649 of 2019 to recall the P.Ws.1 to 6. He further submitted that as per Section 33 (5) POCSO Act, "The Special Court shall ensure that the child is not called repeatedly to testify in the Court" and hence the Trial Court has rightly dismissed the petition with regard to PW1 is concerned and therefore he strongly opposed this petition.

5. Taking into consideration the charges being faced by the petitioner, this Court is inclined to give one more chance to the petitioner to cross examine P.W.1 by imposing stringent conditions.

6. In the result this petition will be allowed on deposit of Rs.6,000/- towards expenses to the P.W.1 before the Trial Court on or before 10.01.2020 failing which the petition shall dismissed without further reference to this court. In case the petitioner has complied with the aforesaid condition within the aforesaid period, the trial court is directed to recall P.W.1 and give an opportunity to the petitioner to cross examine the said witness. The petitioner shall cross examine the said witness on her appearance without seeking any further adjournment.

7. With the aforesaid directions, this Criminal Original Petition is disposed of.

Sd/-  
Asst.Registrar (CS V )

/true copy/  
Sub Asst. Registrar



To

1. The Inspector of Police,  
All Women Police Station,  
Perur, Coimbatore District.

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2. The Public Prosecutor,  
Madras High Court,  
Chennai.

+1 cc to M/s.M.N.Balakrishnan Advocate sr854 dt 08/01/2020

CRL.O.P.No.34635 of 2019

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