



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2020

CORAM

THE HONOURABLE Mr. JUSTICE P. RAJAMANICKAM

CRL.O.P.No.34637 of 2019

Murugan

... Petitioner/Accused

Vs.

The State by
The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 02.11.2019 in Crl.MP.No.655 of 2019 in Spl.C.C.No.38 of 2018 and direct the Sessions Judge Fast Track Mahila Court, Namakkal District.

For Petitioner : Mr.W.Camyles Gandhi
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 Fast Track Mahila Court, Namakkal District in Crl.M.P.No.655 of 2019 in Spl.C.C.No.38 of 2018 dated 02.11.2019.

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 IPC @ under Section 366(A), 5(i) and 6 of Protection of Children from Sexual Act 2012. He further submitted that P.W.1 to P.W.3 were examined in chief before the trial court on 25.04.2019 and on that date, the petitioner's counsel was suffering from Kidney Stone Problem and hence, he could not attend the court and cross examine the said witnesses. He further submitted that the petitioner has filed Crl.MP.No.655 of 2019 under Section 311 of Cr.P.C to recall P.W.1 to P.W.3 for the purpose of cross examination, but, the learned Trial Court Judge without giving an opportunity to the



petitioner to cross examine the said witnesses, he dismissed the said petition. He further submitted that since those witnesses are material witnesses, unless an opportunity is given to the petitioner to cross examine the said witnesses, he will put to irreparable loss and hence he prayed to set aside the order passed by the learned Trial Court Judge and grant an opportunity to the petitioner to cross examine PW.1 to P.W.3.

4. Per Contra, the learned Additional Public Prosecutor has submitted that P.W.1 to P.W.3 were examined in chief before the trial court on 25.04.2019 and on that date, if really, the petitioner's counsel was suffering from any ailment, the petitioner should have filed petition to recall P.Ws 1 to 3 within a reasonable time, but he has filed petition only in the month of October, 2019 with a view to drag on the proceedings. He further submitted that out of 23 witnesses cited on the side of prosecution, 13 witnesses were examined and hence, he prayed to dismiss this petition.

5. Considering 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 to P.W.3 by imposing stringent conditions.

6. In the result, this criminal original petition will be allowed on deposit of Rs.6,000/- towards expenses to P.W.1 to P.W.3 before the Trial Court on or before 21.01.2020, failing which, the petition shall stand 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 to P.W.3 and give an opportunity to the petitioner to cross examine the said witnesses. The petitioner is directed to cross examine the said witnesses on their appearance without seeking any further adjournment.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

1. The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.

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

+1 cc to M/s.W.Camyles Gandhi, Advocate Sr.No. 1579

AKM/08.01.2020/3P-4C /

CRL.O.P.No.34637 of 2019