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Crl.O.P(MD).No.2102 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2020

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P(MD).No.2102 of 2020

and

Crl.M.P.(MD).No.1058 of 2020

Manikandan

... Petitioner/Accused

Vs.

The State Rep. By
The Inspector of police,
All Women Police Station,
Kumbakonam,
Thanjavur District.
(In Crime No.3 of 2018)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records of the learned Sessions Judge, Special Court exclusive trial of cases under POCSO Act, Thanjavur in Crl.M.P.No.1166 of 2019 dated 19.12.2019 and set aside the order rejecting the cross examination of P.W.1.

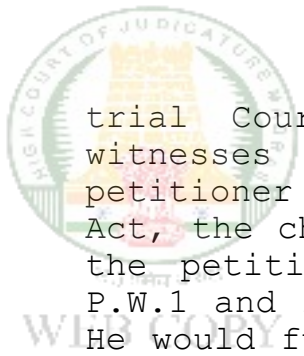
For Petitioner : Mr.Ma.Karunanithi

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 19.12.2019 passed in Crl.M.P.No.1166 of 2019 in Special Sessions Case.No.27 of 2018 on the file of the learned Sessions Judge, Special Court exclusive trial of cases under POCSO Thanjavur.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused facing trial in Special Sessions Case.No.27 of 2018 charged for the offences under Section 3(b), Section 6(2counts) r/w Sections 4, 5(c), 5(m) and Section 7 r/w 8 of POCSO Act. The above said case was posted for trial on 18.10.2019, 21.10.2019 and 21.11.2019 for examination of prosecution witnesses P.Ws.1, 2, 3, 4, 5 and P.W.12. Since the petitioner's counsel was engaged belatedly and he was not having proper instructions and thereby he was unable to cross examine the witnesses on the same day. Thereby, the petitioner had filed the petition to recall the witnesses P.Ws.1, 2, 3, 4, 5 and P.W.12. The



trial Court partly allowed the petition in respect of other witnesses excepting P.W.1. The learned counsel appearing for the petitioner would submit that though as per Section 33(5) of POCSO Act, the child witness shall not be called repeatedly to the Court, the petitioner had not filed any earlier petition for recalling P.W.1 and it was the only time P.W.1 was brought before the Court. He would further submit that P.W.1 is a crucial witness and if the petitioner is not permitted to recall and cross examine P.W.1, great prejudice will be caused to the petitioner and thereby in the interest of justice and fair trial would pray that the order may be set aside and direction may be issued to the petitioner to recall P.W.1 for cross examination on payment of cost and fixation of terms.

3.The learned Additional Public Prosecutor appearing for the respondent would submit that the trial Court finding that P.W.1 is a child witness taking note of Section 35(5) of the POCSO Act and also taking into consideration the verdict of the Apex Court in ***Vinoth Kumar Vs. State of Punjab*** had dismissed the petition.

4.Perused the materials available on record.

5.This Court has gone through the impugned order passed by the trial Court and it is seen that the trial Court had dismissed the petition in respect of P.W.1 taking into consideration Section 35(5) of the POCSO Act and following the dictum laid in the case of ***Vinoth Kumar Vs. State of Punjab***. I do not find any infirmity or illegality in the order passed by the trial Judge. However, the fact remains that the petitioner is facing serious charges and P.W.1 is a crucial witness. This Court is of the opinion that since P.W.1 is a crucial witness, one final chance may be given to the petitioner to recall P.W.1 and cross examine her on imposing of cost and terms in the interest of justice.

6.In view of the same, the order dated 19.12.2019 passed by the learned Sessions Judge, Special Court exclusive trial of cases under POCSO Thanjavur in Crl.M.P.No.1166 of 2019 in Special Sessions Case No.27 of 2018 in respect of dismissing recall of P.W.1 is set aside. The petitioner is directed to appear before the trial Court on 10.02.2020 and file a process memo along with cost of Rs.5,000/-. On such payment of cost of Rs.5,000/- and filing of process memo, the trial Judge in consultation with the respondent police shall fix a date for appearance of P.W.1. On the date fixed by the trial Court, the respondent police shall produce P.W.1 before the Court and the petitioner shall cross examine her on the same day without fail. If the petitioner fails to cross examine P.W.1 on the day of her appearance, he will lose his further chance to cross examine her. The trial Judge shall disburse Rs.5,000/- to P.W.1 on the day of her appearance before the Court.



7. With the above directions, this criminal original petition is allowed. Consequently, the connected criminal miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS II)

/ /2020

Sub Assistant Registrar(CS)

vsg

To:

1. The Sessions Judge,
Special Court exclusive
trial of cases under POCSO,
Thanjavur.

2. The Inspector of police,
All Women Police Station,
Kumbakonam,
Thanjavur District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.MA.KARUNANITHI, Advocate (SR-5321[F] dated
07/02/2020)

Crl.O.P(MD) .No.2102 of 2020

and

Crl.M.P. (MD) .No.1058 of 2020

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