



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

WEB COPY

Crl.O.P.(MD) No.2957 of 2020
and
Crl.M.P(MD) No.1557 of 2020

Maniprasath ... Petitioner / Respondent / Accused No.A-1

Vs.

1. Rahini ... 1st Respondent / Petitioner / Victim Girl-PW-2

2. State: The Inspector of Police
Sivagangai All Women Police Station
Sivagangai District.
(Crime No.7/2015). ...2nd Respondent / Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.1568 of 2019 in Spl.S.C.No.7 of 2016 on the file of the Special Court for POCSO Act, Sivagangai dated 12.02.2020

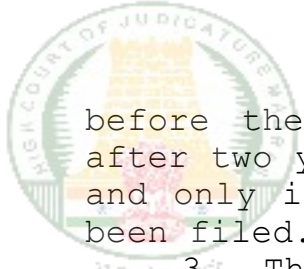
For Petitioner : Mr.V.Kannan

For Respondent : Mr.S.Chandrasekar
No.2 Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to to set aside the order passed in Crl.M.P.No.1568 of 2019 in Spl.S.C.No.7 of 2016 on the file of the Special Court for POCSO Act, Sivagangai dated 12.02.2020.

2. The case of the prosecution is that the petitioner is arrayed as A1 in this case, who is facing trial for offence under Sections 5(j)(ii)(l) 6 of POCSO Act @ 417,420,366(A) of IPC, 5(j)(ii)(l) of POCSO Act and 506(ii) of IPC. PW2/victim in this case was examined in chief on 23.11.2019 and she was cross examined on the same day and trial continued. After arguments were closed before judgment the victim/PW2 had filed a petition under Section 311 of Cr.P.C seeking to recall herself and examine her. In the petition it is stated that at the time of examining her in chief, she was threatened and she was made to depose before the Court that she and A1 were living together and on the false pretext the victim/PW 2 was taken by the first accused to his house for one day and thereafter driven out from his house and that PW2/victim is living alone with her infant child. The petitioner has also filed counter



before the trial Court stating that the petition has been filed after two years and nine months and there was a matrimonial dispute and only in order to harass the petitioner the present petition has been filed.

3. The trial court after hearing both sides allowed the petition stating that victim/PW 2 was a child at the time of offence and by allowing the petition no prejudice will be caused to the petitioner since opportunity will be given to the cross examine the witness. Against the said order the present petition has been filed.

4. The learned counsel for the petitioner would submit that the victim/PW 2 was examined in chief on 23.11.2019 and thereafter the petitioner and the victim were living together. After two years due to matrimonial dispute she had left the house on her own wish and in order to harass the petitioner the present petition has been filed at the stage of arguments and thereby would pray to set aside the order.

5. The learned Additional Public Prosecutor would submit that the petitioner made a false assurance that he will take care of the victim/PW 2 and her child and taken her home and on the assurance given by him, PW 2 had deposed in his favour whereas after completion of evidence the petitioner had driven away the victim. He would also submit that the petitioner and the PW2/victim are relatives and on the false assurance given by the petitioner she had deposed in favour of the petitioner.

6. I have gone through the order passed by the trial Court.

7. As per Section 311 of Cr.P.C any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Though in this case petition has been filed to recall belatedly, taking into consideration the facts of the case, this Court is of the opinion that recall of PW 2 is essential for arriving at a just decision. Further no prejudice will be caused to the petitioner since he will be having a chance to cross examine PW.2 also. This Court is of the view that there is of no infirmity in the order passed by the trial Court.

8. Hence, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

