



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.06.2020

Pronounced on : 20.07.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)Nos.5802 and 5803 of 2020

WEB COPY

Crl.OP(MD)No.5802 of 2020

Mohamed Saleem

... Petitioner/Sole Accused

Vs

State represented by
The Inspector of Police,
All Women Police Station,
Srirengam,
Tiruchirappalli District.
[Crime No.29 of 2018]

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order dated 25.02.2020 passed in Crl.M.P.No.6036 of 2019 in Spl.S.C.No.8 of 2019 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

Crl.OP(MD)No.5803 of 2020

Mohamed Saleem

... Petitioner/Sole Accused

Vs

State represented by
The Inspector of Police,
All Women Police Station,
Srirengam,
Tiruchirappalli District.
[Crime No.29 of 2018]

... Respondent/Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and set aside the order dated 25.02.2020 passed in Crl.M.P.No.6037 of 2019 in Spl.C.No.8 of 2019 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor



COMMON ORDER

These petitions are filed by the petitioner / sole accused, who is facing trial before the learned Sessions Judge, Mahila Court, Tiruchirappalli in Spl.S.C.No.8 of 2019.

2.This petitioner is facing trial for the offence under Sections 9(m), 9(o), 10, 11(4) r/w 12 of the Protection of Children from Sexual Offences act, 2012 and the trial has already been commenced and listed for arguments.

3.The petition in Crl.O.P(MD)No.5802 of 2020 is filed as against the order passed by the trial Court in Cr.M.P.No.6036 of 2020 dated 25.02.2020 for recalling the Investigation Officer/PW14 for the purpose of further cross examination and the petition in Crl.O.P(MD)No.5803 of 2020 was filed as against the order passed by the trial Court in Cr.M.P(MD)No.6036 of 2019 dated 25.02.2020 to reopen the case for the purpose of further cross examination of the Investigation Officer/PW14.

4.The said petitions have been filed before the trial Court, when the matter was listed for arguments that certain vital questions were missed during the cross examination of the Investigation Officer / PW14 due to oversight and this material defect has been noted, only at the time of preparing notes for arguments and therefore, immediately they have filed the above said petitions under Section 311 CrPC and to recall the Investigation Officer and to reopen the case for the purpose of further cross examination of PW14. The petitions were objected to by the prosecution that PW14 has already been cross examined in detail and this petitions are filed vexatiously to drag on the proceedings further.

5.The trial Court considering the rival submissions, dismissed the petitions on the ground that already sufficient time was granted for examination of the investigation officer in chief as well as in cross and sufficient time has been taken by the accused for cross examining Investigation Officer and now the case is posted for arguments and at this stage, these petitions to recall the investigation officer and reopen the case are not sustainable and the petitions are devoid of merits.

6.Aggrieved over the same, the petitioner has filed the present original petitions.

7.Heard Mr.Thiruvadi Kumar, learned Counsel for the petitioner and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor and also perused the materials available on record.



8.Mr.Thiruvadi Kumar, learned Counsel submits that the petitioner is facing serious charges for the offence under the POCSO Act and this petitioner is the Secretary of the Society of a school, where the victim girl is alleged to have been abused and harassed.

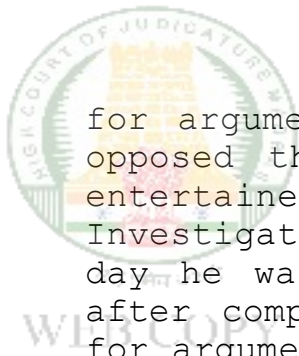
9.According to the petitioner, there is existing dispute between the Petitioner/Secretary of the school, the President of the school/PW4. This complaint itself has been lodged by PW1, who is none other than the daughter of PW4, the President of the school. There are complaints and counter complaints, which are lying with the respondent Police and the questions pertaining to the same were inadvertently omitted to be asked, while cross examining the Investigation Officer/PW14 and therefore, it is necessary to recall the Investigation Officer to cross examination on those aspects to establish the enmity prevailing between the petitioner / Secretary of the school and the president of the School/PW4.

10.Per contra Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor strongly opposes these petitions that the petitioner is facing serious charges under the POCSO Act and the trial Court has also concluded the examination of the parties and posted the matter for arguments. At this stage, the petitions were filed only for the purpose of dragging the trial further and therefore, the petitions cannot be maintained. He also pointed out that the Investigation Officer[PW14] was crossed examined by the petitioner at length and those vital aspects with regard to the dispute between the petitioner and PW4 was also examined during the cross examination of PW14.

11.The case of the petitioner is that there is a dispute among the Office Bearers of the Society with PW4 and the prosecution has been initiated by the daughter of PW4/ President of the Society, as if, the petitioner has misbehaved with the grand daughter of PW4. Though certain specific questions have been put forth before the Investigation officer, when he was cross examined on 12.09.2019, some more vital questions pertaining to the complaints lying with the respondent Police on the dispute between the petitioner and other Office Bearer / PW4 have been omitted to be asked and therefore, recalling the Investigation Officer is just and necessary.

12.Now the question is whether these petitions are filed in order to drag on the proceedings pending before the trial Court.

13.The trial Court dismissed the petitions that they have been filed at the fag end of the trial, when the case was listed



for arguments. The learned Additional Public Prosecutor has also opposed these petitions stoutly that these petitions cannot be entertained at the stage of arguments. It is seen that the Investigation Officer was examined on 12.09.2019 and on the same day he was also cross examined. After questioning 313 CrPC and after completing the defence side evidence, the case was posted for arguments on 16.12.2019. When these applications were filed on 16.12.2019, the respondent filed their objection on 25.02.2020 and on the same day, the petitions were also dismissed.

14.In view of the present petitions already four months have also been lapsed. The petitioner has taken out a reasonable plea that there is dispute between himself and the other office bearer PW4 and the case itself has been instituted by the daughter of PW4 with the help of his grand daughter and therefore, certain questions, which have to be raised before the Investigation Officer can be crucial in deciding the issue before the trial Court.

15.The applications were also filed immediately within three months from the date of examination of the Investigation Officer PW14. Moreover, the Investigation Officer is expected to give evidence only based on the available records and therefore, recalling of the Investigation Officer in no way would cause any prejudice to the prosecution. On the other hand, if any certain vital material, which could be elicited during the evidence, denying the opportunity would affect the accused ultimately.

16.In view of the discussion held above and in the interest of justice, these petitions are allowed. The orders passed by the trial Court dated 25.02.2020 in Cr.M.P.Nos.6036 and 6037 are set aside. The investigation officer / PW14 can be recalled with a condition that the Investigation Officer has to be cross examined on the date of his appearance itself without any further adjournment and the petitioner shall bear all the expenses for recalling the witness. The entire course of further investigation of PW14 shall be completed within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge, Mahila Court,
Tiruchirappalli,
Tiruchirappalli District.
- 2.The Inspector of Police,
All Women Police Station,
Srirangam,
Tiruchirappalli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.A.THIRUVADIKUMAR, Advocate (SR-13168[F] dated 21/07/2020)

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