

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.767 of 2021 and CrIMP No.440 of 2021

Arul @ Arul Murugan

... Petitioner

Vs.

State by
The Inspector of Police,
Pudhuchatram Police station,
Namakkal District

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. To set aside the order in CrI MP No.648 of 2020 in Spl CC No.6 of 2016 dated 07.12.2020 of the Sessions Judge, Fast Track Mahila Court, Namakkal and permit the petitioner/accused to cross examine PW1.

For Petitioner : Mr.R.Prasadh

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under

Section 311 of Cr.PC to recall PW1 for the purpose of cross-examination.

2. The petitioner is facing trial before the Court below for an offence under Section 366A IPC and Section 3 read with Section 4 of the POCSO Act. It is seen from records that the prosecution has examined nearly six witnesses and except PW1, the petitioner has cross-examined all the other witnesses. PW1 was examined in chief on 05.11.2020 and the petitioner was not able to cross examine her on the same day and hence, her evidence was closed. When the petitioner filed a petition to recall PW1 for cross-examination, the same was dismissed by the Court below on the ground that PW1 is the victim girl who was a minor at the time of the alleged incident and she cannot be repeatedly called before the Court to testify. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

4. The petitioner is facing serious charges before the Court below. Except PW1, the petitioner has cross-examined all the other witnesses, who have been examined by the prosecution. A reading of the final report and the deposition of PW1 shows that there was some affair between the petitioner and PW1 and they both are known to each other. Considering the facts and circumstances of the case, this Court is inclined to give one last opportunity to the petitioner to recall PW1 for cross examination.

5. In view of the above, the order passed by the Court below in CrI MP No.648 of 2020, dated 07.12.2020 is hereby set aside. The Court below is directed to fix a date for the cross-examination of PW1. The petitioner shall pay cost of Rs.1,000/- to PW1 on the day of her appearance. On such payment of cost, the petitioner shall be permitted to cross-examine PW1 and the cross examination shall be completed on the same day. If for any reason, the petitioner fails to cross-examine PW1 on the day of her appearance, the petitioner shall forfeit his right to recall PW1 in future. It is made clear that the petitioner shall cross-examine all the other witnesses to be examined

by the prosecution on the same day they are examined in chief.

6. This criminal original petition is allowed accordingly and the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

21.01.2021

Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

rka

To

1.State by

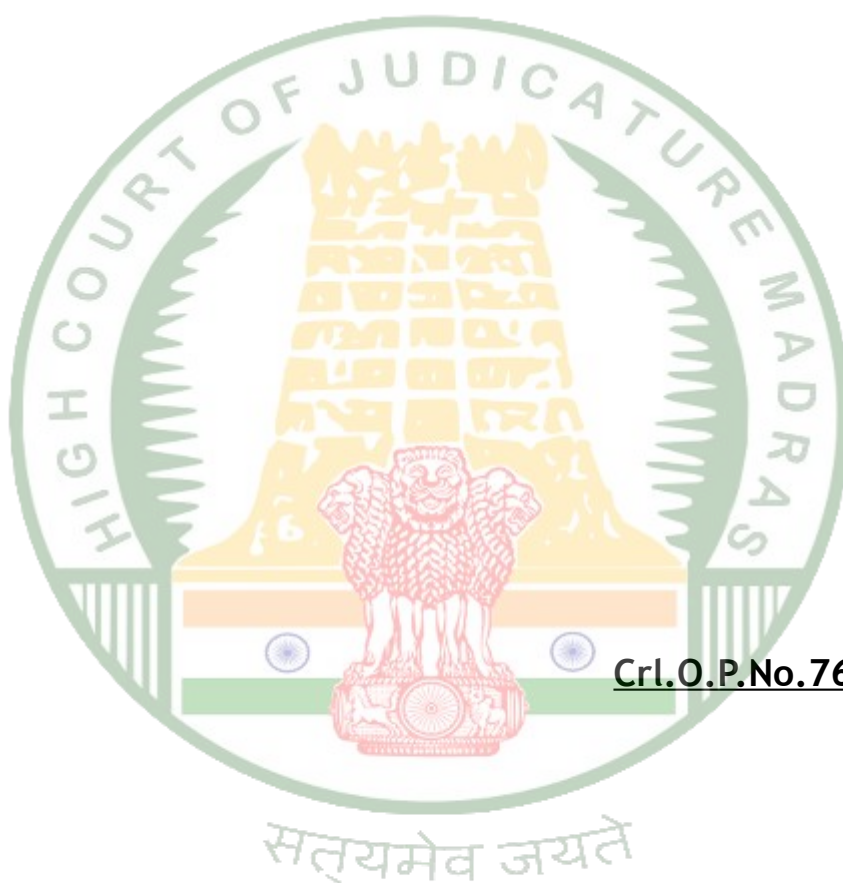
The Inspector of Police,
Pudhuchatram Police station,
Namakkal District

2.The Public Prosecutor,
Madras High Court.

CrI.O.P.No.767 of 2021

N.ANAND VENKATESH,J.

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CrI.O.P.No.767 of 2021

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