



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17758 of 2021

and

CRL.M.P.No.9744 of 2021

K.Padmanaban
s/o. Kuppusamy

...Petitioner

Versus

State by Inspector of Police,
Ammappettai Police Station,
Salem District.
Crime No.444 of 2013

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the Order dated 23.12.2020 passed in Crl.M.P.No.510 of 2020 in Old SSC.No.49 of 2015 and New SSC.No.10 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem and to allow the above Criminal Original Petition.

For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.A.Damodaran
Addl.Public Prosecutor

ORDER

(This case has been heard through video conference)

The Petitioner/Accused in Crl.M.P.No.510/2020 in New SSC.No.10 of 2019 in Old SSC.No.49/2015 had filed this petition seeking to recall P.W.9, that was dismissed by the lower court by order dated 23.12.2020 against which the present petition.

2. The contention of the petitioner is that in this case, the victim is PW9. She had been cross-examined on the same day. PW9 is not a victim, no doubt, she was a minor at the date of occurrence. PW9 has not been cross examined in this case. All the other witnesses have been cross-examined then and there without delay. On the date of examination of PW9, the counsel was not available, hence, could not be cross examined recalling PW9. Since P.W.9 is a child, minor and classifying her as a child witness under Section 33(5) of POCSO Act could not be proper.



3. The learned Addl. Public Prosecutor (Crl. side) appearing for the respondent would submit that the case is of the year 2015 and the occurrence had taken place in the year 2013. Two years thereafter only, final report had been filed in Special SSC.No.49 of 2015. Thereafter, on formation of the special court, the case was transferred and the case now numbered as New SSC No.10/2019. It is almost 8 years from the date of occurrence, the trial has been successfully protracted and prolonged. In this case, so far 28 witnesses have been examined. The case has been posted for examination of the Investigating Officer on 07.10.2021. Earlier the petitioner was made a plea to recall PW9 and PW10 which was dismissed by the lower court under Section 311 of Cr.P.C in Crl.M.P.No.2 of 2019 on 13.09.2019. Thereafter, the petitioner had not agitated the same and without any change of circumstances and giving no other reasons, this petition has been filed which cannot be considered. Finding that the reasons given by the lower court seems to be appropriate, this Court is not inclined to interfere with the same.

4. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

tsi/nr
To

1. The Sessions Judge
The Special Court for Exclusive trial of Cases
under POCSO Act
Salem
2. The Inspector of Police,
Ammapettai Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.17758 of 2021
and
CRL.M.P.No.9744 of 2021

RK (CO)
SP(20/10/2021)