

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.2795 OF 2021

AND

CRL.MP.NO.1547 OF 2021

Raghunathan

... Petitioner

Vs.

The State of Tamil Nadu,
Rep.by the Inspector of Police,
All Women Police Station (East),
Coimbatore.

(Crime No.774 of 2019)

... Respondent

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to allow the above Crl.OP. by setting aside the order dt.18.12.2020 passed in CMP.No.636 of 2020 in Spl.C.C.No.92/2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore insofar as it relates to imposition of costs of Rs.2,000/- to each of the witnesses PW-1, PW-2, PW-9, PW-12, PW-14, PW-17, PW-29 to PW-32 is concerned and the consequential order dated 04.01.2021 passed in CMP No.636/2020 in Spl.C.C.No.92 of 2019, on the file of the said Court.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.M.Mohammed Riyaz
Additional Public Prosecutor

WEB COPY
O R D E R

This Criminal Original Petition has been filed against the order passed by the Court below in the application filed by the petitioner under Section 311 of Cr.P.C., wherein, the Court below while allowing the application has directed the petitioner to pay a cost of Rs.2000/- to each of the witnesses on or before 04.01.2021, failing which, the application will stand automatically dismissed.

2.The petitioner is facing trial before the Court below for an offence under Section 302 IPC, Section 9(m), 9(n) and Section 10 of Protection of Child from Sexual Offences Act, 2012.

3.The prosecution had examined PW-1 to PW-32. The petitioner had cross examined PW-1 to PW-28. Due to some misunderstanding with the counsel, the counsel seems to have withdrawn the Vakalat and the petitioner was requesting for appointing an advocate from the Legal Aid. Ultimately, the petitioner engaged a counsel and an application came to be filed under Section 311 of Cr.PC., to recall PW-1, PW-2, PW-9, PW-12, PW-14, PW-17, PW-29 to PW-32 for cross examination.

4.The Court below on considering the facts and circumstances of the case, allowed the application by an order dated 18.12.2020, by imposing a condition to the petitioner to pay a cost of Rs.2,000/- to each of the witnesses on or before 04.01.2021, failing which, the petition will stand dismissed. It is also seen from records that the petitioner did not deposit the amount within the time frame and the application came to be automatically dismissed. Aggrieved by the same, the present petition has been filed before this Court.

5.Heard Mr.K.Govi Ganesan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent.

6.Taking into consideration the facts and circumstance of the case and also the reasoning given by the Court below, this Court does not find any blatant illegality or infirmity in the order passed by the Court below. In fact, the Court below had leniently considered the application filed by the petitioner.

7.The only ground that has been raised in the present petition is that the condition imposed by the Court below is onerous and the petitioner does not have the financial capacity to deposit such a huge amount.

8.The petitioner is facing serious charges before the Court below and considering the facts and circumstances of the case, this Court deems it fit to afford an opportunity to the petitioner to cross examine the witnesses. However, considering the financial capacity of the petitioner, the order passed by the Court below is modified to the extent that the petitioner will pay a cost of Rs.1,250/- to each of the witnesses and this amount shall be deposited before the Court below on or before 01.03.2021. It is made clear that if the amount is not deposited within the time frame fixed by this Court, the order of dismissal will stand revived.

9.If the petitioner deposits the cost as directed by this Court, the Court below shall fix a date for the cross examination of the witnesses sought to be recalled and the petitioner shall cross examine those witnesses on the same day they appear before the Court below and complete the cross examination on the same day. If for any reasons, the petitioner fails to cross examine any of the witnesses on their appearance before the court, the petitioner shall forfeit his right to recall those witnesses in future.

10.This criminal original petition is accordingly allowed and the Court below is directed to complete the proceedings in Spl.C.C.No.92/2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Inspector of Police,
State of Tamil Nadu,
All Women Police Station (East),
Coimbatore.

2.The Sessions Judge,
The Special Court for Exclusive Trial
of Cases under POCSO Act,
Coimbatore.

3.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.8744

Cr1.O.P.No.2795 of 2021

PPA(CO)
CS/17/02/2021