

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.3121 of 2021
and
Crl.MP.No.1777 of 2021

Angamuthu

...Petitioner

.Vs.

State by
The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
Crime No.8 of 2018

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 11.02.2021 passed in Crl.MP.No.98 of 2021 in Old SSC No.12 of 2019 and New SSC No.212 of 2019, on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem and allow the above criminal original petition.

For Petitioner : Mr.R.Nalliyappan

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

O R D E R

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C., to recall PW-4 for cross examination.

2.The petitioner is facing trial before the Court below for an offence under Section 363, 366 of IPC r/w Section 4 and 3 (b) of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act). The prosecution had examined the victim girl as PW-4 on 10.09.2019. She was not cross examined by the petitioner and hence her evidence was closed. The petitioner filed an application under Section 311 of Cr.P.C., to recall PW-4 for cross examination. This application was dismissed by the

Court below mainly by relying upon Section 33(5) of the POSCO Act. Aggrieved by the same, the present criminal original petition has been filed before this Court.

3.Heard Mr.R.Nalliyappan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent.

4.It is seen from records that there was a love affair between the petitioner and the victim girl. The victim girl has stated about the same even during the course of the chief examination. The petitioner is facing trial for serious charges and in the considered view of this Court, one last opportunity must be given to the petitioner to cross examine PW-4. This is more so considering the fact that both of them are known to each other for sometime.

5.In view of the above, the order passed by the Court below in Crl.MP.No.98 of 2021, dt.11.02.2021, is hereby quashed. The Court below is directed to fix a date for the appearance of PW-4. The petitioner shall pay a cost of Rs.1500/- to PW-4 on the day when PW-4 appears before the Court. On such payment, the petitioner shall be permitted to cross examine PW-4 and the cross examination shall be completed on the same day. If for any reason, the petitioner fails to cross examine PW-4 on the date of her appearance, the petitioner will forfeit his right to recall PW-4 in future. It is also made clear that the petitioner will cross examine all the other witnesses examined by the prosecution on the same day they are examined in chief.

6.This Criminal Original petition is accordingly allowed and the Court below is directed to complete the proceedings in SSC No.212 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 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

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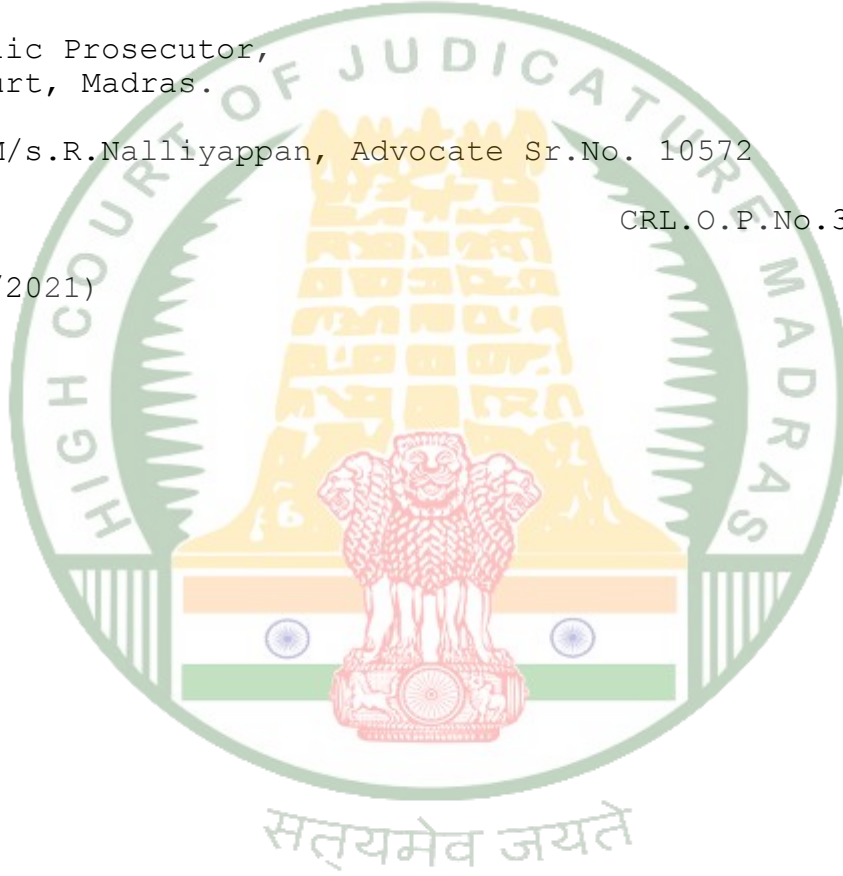
Sub Assistant Registrar

KP
To

- 1.The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
 2. The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Salem.
 - 3.The Public Prosecutor,
High Court, Madras.
- +1 cc to M/s.R.Nalliyappan, Advocate Sr.No. 10572

CRL.O.P.No.3121 of 2021

GMR(CO)
RMP(24/02/2021)



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