

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.5911 of 2021

1.Chinnadurai

2.Mayavel

3.Prathap

4.Sarathbabu

Petitioners

vs.

The State rep. by  
The Station House Officer,  
Thittakudi Police Station,  
Cuddalore.  
(Crime No.63 of 2019)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.MP.No.1021 of 2020 in Spl.SC.No.84 of 2019, dated 05.01.2021, passed by the learned Special Judge exclusive trial of POCSO Act cases at Cuddalore and recall the PW2 for cross examination.

For Petitioners : Mr.S.Thirugnanam  
For Respondent : Mr.M.Mohammed Riyaz  
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 Cr.P.C. insofar as PW-2 victim girl is concerned.

2.The petitioners are facing trial before the Court below for offences under Sections 6 and 17 of POCSO Act and 366, 366 (A), 376(3) of IPC. The charges were framed on 16.09.2019 and the summons were issued to the witnesses. The prosecution examined PW-1 to PW-5 on 18.02.2020 and Exhibits P1 to P4 were also marked. Since, these witnesses were not cross examined, their evidence was closed. Thereafter, the prosecution has examined PW-6 to PW-11. At this stage, an application came to be filed by the petitioners under Section 311 Cr.P.C. to recall PW-1 to PW-5 for cross examination.

3.The Court below on considering the facts and circumstances of the case was pleased to partly allow the application insofar as the PW-1, PW-3 to PW-5 and dismissed the application insofar as the PW-2 is concerned. Aggrieved by the same, the present petition has been filed before this Court.

4.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing on behalf of the respondent.

5.Taking into consideration the facts and circumstances of the case and also of the fact that there was an affair between A1 and the victim girl and they are known well to each other and also after considering the seriousness of the charges faced by the petitioners, this Court is inclined to give one last opportunity to the petitioners to recall PW-2 for cross examination.

6.In view of the above discussion, the order passed by the Court below in Crl.M.P.No.1021 of 2020 dated 05.01.2021 is hereby set aside insofar as dismissing the application to recall PW-2. The petitioners are directed to deposit a cost of Rs.4,000/- before the Court below on or before 07.04.2021. A memo shall be filed before the Court below on 08.04.2021 informing the compliance of the condition imposed by this Court. The Court below shall thereafter fix a date for the appearance of PW-2 and the petitioners shall cross examine PW-2 on the same date of her appearance and the cross examination shall also be completed on the same day. The Court below shall ensure that the victim girl is not made to wait for a very long time and the case is called immediately after the victim girl comes to the Court. If for any reasons, the petitioners fail to cross examine PW-2 on the date of her appearance, the petitioners will forfeit their right to recall PW-2 in future and the order passed by the Court below dismissing the application for PW-2 will stand revived. It is also made clear that the petitioners will cross examine all the other prosecution witnesses on the same day, they are examined in-chief.

7.This criminal original petition is allowed and the Court below is directed to complete the proceedings in Spl.S.C.No.84 of 2019, within a period of three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SSr

<https://hcservices.ecourts.gov.in/hcservices/>

To

1. The Special Judge (Exclusive trial of POCSO Act cases),  
Cuddalore.
2. The Station House Officer,  
Thittakudi Police Station,  
Cuddalore.
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.P.K.Ilavarasan, Advocate, S.R.No.19377.

KJS (CO)  
CSR 30.03.2021

CrI.O.P.No.5911 of 2021



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