



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE. M.NIRMAL KUMAR

WEB COPY

Crl.O.P.No.7439 of 2021

Mr.Sivanandhan

... Petitioner

Vs.

1. State represented by
All Women Police Station,
Tirupattur.

2. Indhu
(R2 impleaded as per order of this
Court in Crl.MP.6111/2021 in
Crl.O.P.No.7439 of 2021)

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order in Crl.M.P.No.95 of 2020 in Spl.SC.No.17 of 2018 dated 16.09.2020 passed by the Special Session Court (POSCO Act) at Vellore and subsequently direct the Special Session Court (POCSO Act) to recall the witness PW1 -Indhu and PW2-Priya for further cross in Spl.SC.No.17 of 2018 pending on the file of the Special Session Court pass (POCSO Act).

For Petitioner : Mr.M.Palanivel
For Respondent-1 : Mr.Damodharan
Counsel for Government (Crl.Side)

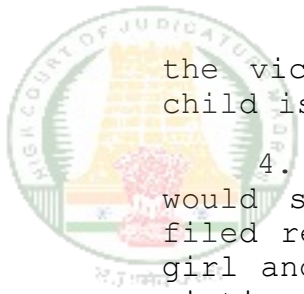
For Respondent-2 : Mr.S.Tilto Prabhu

ORDER

The petitioner has filed a direction petitioner seeking to set aside the order of the learned Special Judge under POCSO Act, Vellore in Crl.M.P.No. 95 of 2020 by order dated 16.09.2020 dismissed the recall of PW-1 and PW-2 in Spl.S.C.No. 17 of 2018.

2. The contention of the petitioner is that the petitioner and the victim girl were in love with each other and which was objected by mother of the victim. The victim has been examined as PW-1 and her mother as PW-2 during trial. Though both the witnesses were cross examined, the decision of the victim and her parents to get the victim married somebodyelse and the victim not intending to further pursue th case against the petitioner with regard to the subsequent development. This aspects have not been elucidated from the witness though it was brought to the notice of the Lower Court about the same.

3. The Lower Court had not considered the same and dismissed the recall petition for the reason that PW-1 being



the victim girl under Section 33(5) of the POSCO Act, the child is not to be called repeatedly to testify in the Court.

4. The learned Counsel for the Government (Crl. Side) would submit that in this case, the petitioner/accused has filed recall petition under Section 311 and PW-1 is the minor girl and there is a prohibition under the Act not to call the victim repeatedly to testify in the Court. Further, PW-2 is the mother and both of them were examined on 14.05.2018 and on that day elaborate cross examination has been completed. In this case, totally 8 witnesses have been examined. At this stage, the recall petition has been filed to protract and prolong the trial and also causing anger to the victim and the family members.

5. The victim PW-1 had filed Crl.M.P.No.6111 of 2021 and got impleaded in the above Criminal Original Petition, in which, she has filed an affidavit reiterating the relationship with the petitioner and at that time, she had given a statement against the petitioner on the compulsion of the family members and others due to external affairs. Later the petitioner and the victim had parted their ways and have chosen their individual path.

6. The parents of the victim are arranging marriage for the victim and hence they are not interested in pursuing the case against the petitioner.

7. Considering the submissions and also perusing the materials available on record, the finding of the lower court that, the victim not to be repeatedly called does not arise because the victim and her mother are willing to examine themselves as witness for the purpose of cross examination and they have no objection to be recalled.

8. The petitioner and the victim (under age) have love with each other and the petitioner is facing a serious offence, this Court is inclined to set aside the order of the trial court and on their appearance, permit the petitioner to recall P.W.1 and P.W.2 for the purpose of cross examination. The petitioner to cross examine P.W.1 and P.W.2 on the day when the witness appear without fail.

9. In the result, the order dated 16.09.2020 in Crl.M.P.No.95 of 2020 passed by the learned Special Judge, Vellore is set-aside and the Criminal Original Petition is, accordingly, allowed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



To

1. The Sessions Judge,
Special Court under POSCO Ac,
Vellore.
2. The All Women Police Station,
Tirupattur.
3. The Hon'ble POSCO Committee,
High Court, Madras.
4. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No. 7439 of 2021

JPL (CO)
TE (08/02/2021)