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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11454 of 2021

and

Crl.M.P.No.6657 of 2021

1.Murugesan

2.Kannan

... Petitioners

Versus

State by Inspector of Police

Valapadi Police Station

Salem District

Crime No.621 of 2016.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set-aside order dated 22.03.2021 passed in Crl.M.P.No.105 of 2021 in Old SSC.No.28 of 2019 and New SSC.No.227 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POSCO Act, Salem and to allow the above Criminal Original Petition.

For Petitioners: Mr.N.Premalatha

For Respondent : Mr.A.Damodaran

Government Advocate (Crl.Side)

ORDER

This petition has been filed to set-aside order dated 22.03.2021 passed in Crl.M.P.No.105 of 2021 in Old SSC.No.28 of 2019 and New SSC.No.227 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POSCO Act, Salem and to allow the above Criminal Original Petition.

2. The petitioners had filed a petition under Section 311 of Cr.P.C., before the trial Court to recall PW6 and PW7 for cross examination and the Trial Court by the order dated 22.03.2021, dismissed the same, as against which, the present petition has been filed.



3. The contention of the petitioners is that the victim has been examined as PW2 in this case. PW2 victim girl and two other girls viz., Radhika and Illavarasi, left the School and went to Ooty and on the complaint of her parents, they were secured. The victim girl was sent to a Home and others were taken by their parents. Thereafter, the victim girl was handed over to her parents. In the meanwhile, she gave a 164 of Cr.P.C., statement, as PW2 and recorded MO1. However, from the evidence, it is seen that only her signature was obtained. Thereafter, she has been treated as hostile witness.

4. It is the further contention of the petitioners that PW6-Doctor, who examined the victim and PW7-the observation mahazar witness, were examined on 03.12.2020 and through PW6, Ex.P11 to Ex.P14 were marked and through PW7 Ex.P15 was marked. They were not cross-examined on that day, since the brother of the petitioners' counsel passed away and the counsel went to attend his funeral ceremony. However, the Lower Court dismissed the same and the case is now at the stage of defence.

5. The learned Government Advocate (Crl.Side) has submitted that in this case, the witnesses PW6 and PW7 were examined on 03.12.2020, however, the petitioners failed to cross examine the witnesses and they belatedly filed the Miscellaneous Petition, at the stage of defense to drag on the proceedings. PW6/Doctor, official witness marked the medical records as Ex.P11 to Ex.P14 and PW7/observation mahazar witness marked Ex.P15. At this stage of the pandemic period, the Doctor is engaged only in treating patients and if recalled, it will only cause harassment to the witnesses. The delayed filing of this petition under 311 Cr.P.C., is only to protract the trial.

6. Considering the submissions and perused the materials, it is seen that PW2/victim had not stated anything about the petitioners. Hence, the Doctor's evidence is to be necessarily cross examined with regard to the report. The petitioners have also challenged the scene of occurrence and hence, the observation mahazar has to be re-examined. Hence, PW7/observation mahazar witness has to be questioned with regard to the same.

7. In view of the same, this Court is inclined to set aside the order of the Lower Court. Accordingly, the order of the Lower Court is set aside and consequently, PW6 and PW7 are re-called. However, it is made clear that PW6 and PW7 should be cross examined on the same day of their appearance without asking for any further adjournment. Further, the petitioners are directed to pay a sum of Rs.5,000/- (Rupees five thousand only) to the Advocate Bar Association, Salem.



8. This Criminal Original Petition is allowed.
Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dna

To

- 1.The Special Court for Exclusive Trial of Cases,
Under POSCO Act, Salem.
- 2.The Inspector of Police,
Valapadi Police Station,
Salem District,
Crime No.621 of 2016.
- 3.The Hon'ble POSCO Committee,
High Court, Madras.
- 4.The Secretary,
The Advocate Bar Association,
Salem.
- 5.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.11454 of 2021
and
Crl.M.P.No.6657 of 2021

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srg 09/08/2021