



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.9739 of 2021

P.Manikandan

...Petitioner

Versus

State Rep. by its.,
The Inspector of Police,
Mohanur Police Station,
Mohanur,
Namakkal District.
(Cr.No.441 of 2016).

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order made in Crl.M.P.No.320 of 2021 in Special C.C.No.15 of 2018, dated 26.03.2021 on the file of the Sessions (Fast Track Court Mahila) Court, Namakkal.

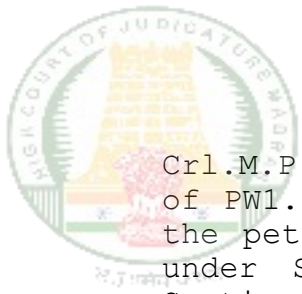
For Petitioner : Mr.C.Prakasam

For Respondent : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

The petitioner/accused, who is facing trial in Special C.C.No.15 of 2018, for offence under Sections 366(A), 5(1) r/w 6 of the Protection of Children from Sexual Offence Act, 2012 has filed a petition under Section 311 Cr.P.C., before the learned Sessions (Fast Track Mahila) Judge, Namakkal in Crl.M.P.No.320 of 2021 in Special C.C.No.15 of 2018. The learned Sessions (Fast Track Mahila) Judge, Namakkal, by order, dated 26.03.2021, dismissed the petition, against which the present petition.

2.The learned counsel for the petitioner submitted that the victim girl/PW1 was examined in chief on 20.03.2019. At the time of cross examination, the petitioner was present, but the Advocate who is defending the petitioner during trial, was held up in another Court and did not cross examine the victim girl. Hence, a petition under Section 309 Cr.P.C., was filed in



Crl.M.P.No.171 of 2019 seeking adjournment for cross examination of PW1. The trial Court without considering the same dismissed the petition. The petitioner earlier sought for some documents under Section 207 Cr.P.C., and also filed a petition under Section 311 Cr.P.C., in Crl.M.P.No.320 of 2021 to recall the victim girl for cross examination. During trial, the petitioner was charged and facing trial for heinous offence committed by him. The presumption is staring against the petitioner who is facing the trial for offence under the provisions of the Protection of Children from Sexual Offence, Act, 2012 and hence, the petitioner has to necessarily cross examine the victim girl/PW1 to put forth his defence and dislodge the presumption.

3.The learned counsel further submitted that the respondent Police filed counter in the recall petition mechanically. In the counter, it is mentioned that the recall petition has been filed for the reason that the petitioner had omitted to put up some vital points to the witnesses and for the purpose of dragging the proceedings in Special C.C.No.15 of 2018, which is not proper on the facts of the case. The learned counsel further submitted that earlier, the victim girl/PW1 lodged a complaint against the petitioner for the alleged offence said to have taken place on 15.01.2016, for which, a case in Crime No.16 of 2016 was filed against the petitioner. After investigation, charge sheet was filed before the trial Court and the same was taken on file as Special C.C.No.17 of 2016. After full-fledged trial, the trial Court passed a judgment of the conviction dated 17.11.2017 and convicted the petitioner for offence under Section 366(A) IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment and also convicted for offence under Section 5(1) r/w 6 of the Protection of Children from Sexual Offence, Act, 2012 and sentenced to undergo ten years Rigorous Imprisonment. As against the same, the petitioner filed an appeal before this Court in C.A.No.812 of 2017 and obtained order of suspension of sentence. The alleged occurrence in this case is said to have taken place after the petitioner came out on bail as under trial prisoner in Crime No.16 of 2016. These vital facts have to be put to the victim girl/PW1 to prove that the petitioner is not the offender and only due to the harassment and torture caused by her family members, she had left her house on her own and joined the petitioner seeking solace and protection. Suppressing all these facts, the petitioner is facing prosecution on the false complaint.

4.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the petitioner is facing trial under the provision of the Protection of Children from Sexual Offence Act, 2012. Earlier, the petitioner was convicted



by the same trial Court in Special S.C.No.17 of 2016 for committing the offence against the same victim girl/PW1. Despite the same, the petitioner repeated the same offence on the same victim girl/PW1. As per Section 33(5) of the Protection of Children from Sexual Offence Act, 2012, the child is not to be called repeatedly to testify in the Court. Hence, he opposed for setting aside the order of the trial Court.

5.This Court considered the rival submissions and perused the materials available on record.

6.In this case, the victim girl/PW1 earlier lodged a complaint and the case in Crime No.16 of 2016 was registered. After filing of charge sheet and completion of trial in Special C.C.No.17 of 2016, the petitioner was convicted and sentenced as stated above. As against the conviction and sentence, the petitioner preferred an appeal before this Court in C.A.No.812 of 2017.

7.As far as this case is concerned, it is a second occurrence which is said to have taken place on 27.12.2016 against the same victim girl/PW1. Hence, the petitioner has to necessarily putforth these aspects before the victim girl/PW1 which are vital in nature. Further, the statutory presumption against the petitioner. The petitioner is facing trial for the heinous offence committed by him on the victim girl/PW1. Hence, the cross examination of the victim girl/PW1 is very necessary. It is also seen that the citation in the case of "Vinod Kumar Versus State of Punjab reported in 2015 (3) SCC 220" pertains to the trap case under the Prevention of Corruption Act. The right of the cross examination is a fundamental right to the accused. The Hon'ble Division Bench of this Court in the case of "M.Kannan Versus State., reported in MANU/TN/0661/2017" had held that "for failure and gross dereliction of duty of the learned counsel engaged by the accused, the accused cannot be penalized."

8.In view of the same, this Court is inclined to permit the petitioner to cross examine the victim girl/PW1. The learned Sessions (Fast Track Mahila) Judge, Namakkal is directed to recall the victim girl/PW1 within a period of one week from the date of receipt of a copy of this order, of course after normal functioning of Court below. The petitioner is directed to cross examine the victim girl on the day when she is present without any further delay. It is made clear that no adjudication would be sought by the petitioner on any grounds.



9. In view of the above, the order, dated 26.03.2021 in Crl.M.P.No.320 of 2021 in Special C.C.No.15 of 2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal is set aside. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Court (Fast Track Mahila),
Namakkal.

2.The Inspector of Police,
Mohanur Police Station,
Mohanur,
Namakkal District.

3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.9739 of 2021

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