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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11651 of 2021
and
Crl.M.P.No.6697 of 2021

Kaliappan

... Petitioner

Versus

State rep.by its
The Inspector of Police,
AWPS, Sankari,
Salem District.

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.189 of 2021 in Old SSC.No.9 of 2015 and New SSC.No.4 of 2019 by the Special Court for Exclusive Trial of Cases under POCSO Act, Salem, consequently recall the prosecution witnesses PW.1, PW.2, PW.4, PW.9 and allow the petitioner to cross-examine them.

For Petitioner : Mr.T.Ganesan

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

ORDER

The Petitioner is the accused in S.S.C.No.4 of 2019 which is pending before the Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences (POCSO), Act, 2012, at Salem, who had filed Crl.M.P.No.189 of 2021, under Section 311 Cr.P.C., to recall PW.1, PW.2, PW.4, and PW.9 for further examination and the same was dismissed on 29.03.2021 by the Trial Court. Against which, the present petition.

2.The contention of the petitioner is that he was charged for the offence under Section 10 read with 9(m) of the POCSO, Act, 2012 and Section 4 of Tamil Nadu Women Harassment Prevention Act. PW.1 is the mother of the victim, PW2 is the victim, PW4 is the father of the victim and PW 9 is the Investigation Officer . Though these witnesses have been cross-



examined, certain vital aspects of the matter were leftover during the cross-examination. According to the petitioner, he was in prison from 14.12.2020 and at that time, PW.1 & PW.2 were examined on 21.12.2020. PW.3 was examined on 29.12.2020 and the Investigation Officer was examined on 22.01.2021. According to the petitioner, PW.1 & PW.3 admitted the dispute between petitioner and PW.3 with regard to the laying of pipe line in the field. Though the witnesses have been examined on this aspect, the details of the property and further details have to be recorded elaborately. Further there were contradictions in the deposition of PW.1, PW.2 and PW.3 and they have to be cross-examined on this aspect. Therefore, the petitioner filed the above said miscellaneous petition before the Trial Court and it was dismissed.

3.The learned Government Advocate (crl.side) submitted that the petitioner is 72 years old man, who had committed the offence against a minor child, who was about 10 years at the time of occurrence and this had psychologically affected the child. The victim has stated about the occurrence and the offence committed by the petitioner clearly in Section 164 Cr.P.C. The witnesses before the Trial Court PW.1 & PW.3, who are the parents of the victim child also confirmed the occurrence. In this case, there is no intention for the victim child to implicate the petitioner, who is residing in the neighbourhood, aged 72, and who had called him as a grandfather. At that age, the petitioner abused the child, hence, the complaint came to be registered. PW.9 is the Investigation Officer who had collected the evidence and filed charge sheet. PW9 confirms the evidence of the parents of the victim child. Now, the case is posted for arguments, at this stage, the petitioner has filed this petition only to drag the proceedings and the victim could not be called for enquiry again and again. Further, he stated that there is specific provision in POCSO Act to complete the trial within a specific period and therefore, entertaining such petitions, which would defeat the object of the Act. All these witnesses PW.1, PW.2, PW.4 and PW.9 were cross-examined in detail and the points raised by the petitioner already put to the witnesses and they answered the same. Hence, the Trial Court has rightly dismissed the petition for recalling the above witnesses.

4.In view of the same, further considering that the case is at the stage of arguments, the occurrence taken place in the year 2014, the investigation completed and charge sheet filed in the year 2015. Thereafter, it had been kept pending for one reason or other. Finally in the year 2019, after completing the formalities, the old SSC.No.9 of 2015 case has been renumbered as Spl.S.C.No.4 of 2019 Trial Commenced. Now, it is almost



seven years and all the witnesses examined and the case is posted for arguments.

5. Considering the facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the trial court. Hence, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Inspector of Police,
AWPS, Sankari,
Salem District.
2. The Public Prosecutor,
High Court, Madras.
3. The Chairman
POCSO Act Committee
High Court, Madras.

CRL.O.P.No.11651 of 2021

PVS (CO)
SB(09/08/2021)