



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P. No.13132 of 2021
and Crl. M.P. No.7216 of 2021

Kalasankar

...Petitioner

Versus

State Rep. by Inspector of Police,
AWPS Police Station,
Sankari, Salem District.
Cr. No.1 of 2019.

...Respondent

Criminal original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 31.03.2021 made in Crl.M.P. No.161 of 2021 in Spl.S.C. No.17 of 2020 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem in so far as dismissal of P.W.2 and P.W.3.

For Petitioner : Mr. S.Sivakumar

For Respondent : Mr. A.Damodaran
Counsel for Govt. of Tamilnadu
(Criminal Side)

O R D E R

This petition is filed to set aside the order dated 31.03.2021 made in Crl.M.P. No.161 of 2021 in Spl.S.C. No.17 of 2020 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem.

2. The petitioner accused in Spl. S.C. No.17 of 2020 who is facing trial for offence under Section 8 r/w. 7 of POCSO Act, had filed a recall petition in Crl.M.P. No.161 of 2021 in Spl.S.C.No.17 of 2020, under Section 311 Cr.P.C. to recall P.W.1 to P.W.3. The trial Court by order dated 31.03.2021 dismissed the same. Aggrieved by the same the present criminal original petition is filed.

3. The contention of the petitioner is that the petitioner has been falsely implicated in this case. The petitioner has not engaged an Advocate of his choice and trial in this case



commenced even before the petitioner would have a legal assistance. In this case P.W.1 is the mother of the victim girl, P.W.2 is the victim girl and P.W.3 is the maternal grand mother of the victim girl. It is the contention of the petitioner that he has been falsely implicated in this case with a motive. It is stated that the victim girl was not even injured. The claim of the victim girl that her lips being cut and injured is false, proved by Medical records, would show that the petitioner has been falsely implicated in this case. The lower Court permitted the petitioner to recall P.W.1 and as regards P.W.2 and P.W.3 the same has been dismissed. He further submitted that the evidence of the witnesses are complete only on subjecting the witnesses for cross examination. In this case, trial recently commenced. It is the case of the petitioner that only three witness were examined in this case so far and by recalling for cross examination of these three witnesses, no delay would be caused. Hence, he prays to set aside the order in CrI.M.P. No.161 of 2021.

4. Learned counsel appearing for the Government of Tamil Nadu (Criminal side) submitted that in this case the victim girl was aged 6 at the time of occurrence, in a deceitful manner she was taken to an isolated place by the petitioner and was assaulted, her lips bitten by the petitioner, thereafter she raised alarm, informed P.W.3, her grandmother and later to her mother P.W.1, about the incident. Hence, a case was registered as against the petitioner. He further submitted that the petitioner's act is an inhuman one. The petitioner is aged about 36 years. The contention of the learned counsel appearing for the prosecution is that by recalling the witnesses, it would amount to harassment and delay in the trial. The petitioner has not given proper reason why the witnesses ought to be recalled. The trial Court, on considering the same, permitted recall of P.W.1, the mother of the victim and dismissed the recall of P.W.2 and P.W.3. Hence the learned counsel submits that finding of the lower Court is perfectly in order and not to be disturbed.

5. In this case, the victim girl earlier examined in chief and the petitioner failed to cross examine the witnesses. Further it is seen that P.W.1 was examined on 03.02.2021 and P.W.2 and P.W.3 were examined on 22.02.2021 by prosecution much earlier to the engagement of a counsel of his choice by the petitioner. The petitioner had now engaged an advocate of his choice.

6. Section 304 Cr.P.C. to be followed. The lower Court already permitted the petitioner to recall P.W.1, the mother of victim girl. Further, it is seen that the petitioner was not with any legal assistance and not engaged any counsel of his choice. The evidence is complete only after it is tested by way



of cross examination. The petitioner is facing trial for serious offence. Depriving a person to cross examine a witness would amount to denial of his right, admitting the chief examination, in this case, only three witnesses so far examined and none are cross examined. The trial is at the initial stage. In view of the same, by recalling P.W.2 and P.W.3 and subjecting them for Cross examination would no way delay the trial. Their evidence can be tested. It would be beneficial for the trial Court to assess the evidence, hence recall and cross examination of P.W.2 and P.W.3 are permitted with the condition that the petitioner should cross examine the witnesses then and there without seeking any adjournments.

7. With the above direction this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police, AWPS Police Station,
Sankari, Salem District.
2. The Special Court for Exclusive Trial of Cases
under POCSO Act,
Salem.
3. The Public Prosecutor,
Madras High Court.

+1 CC to Mr.S.Sivakumar, Advocate, Sr 38535. (24/08/2021)

Cr1.O.P. No.13132 of 2021

RLD (CO)
LS (23/08/2021)