



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.13688 of 2021

Dhanapal

...Petitioner

Versus

The state rep. by
The Inspector of Police,
Ethapur Police Station,
Salem District.
Crime No.31 of 2017

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set-aside the order dated 09.02.2021 passed in Crl.M.P.No.33 of 2021 in New SSC No.205 of 2019 and old SSC No.4 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem .

For Petitioner : Mr. N. Premalatha

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

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No. 33 of 2021 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Salem.

2. The petitioner, who is an accused in Spl.S.C.No.205 of 2019, had filed a petition in Crl.M.P.No.33 of 2021 under Section 311 Cr.P.C., to recall P.W.1 to P.W.4 . The trial Court, by an order dated 09.02.2021, had partly allowed the same. Against which, the present petition.

3. The contention of the petitioner is that the petitioner, and the victim girl and her family, are neighbours. There is some domestic dispute between them, for which, the petitioner had been falsely implicated. The victim girl, who is a school going children, has lodged a false complaint against him as tutored by her mother P.W.2. Though the trial Court had



allowed to recall P.Ws.2 to 4, as regards P.W.1., the petition has been dismissed. P.W.1 is the main witness to the occurrence and hence, she has to be necessarily cross examined.

4. The learned Government Advocate (crl. side) appearing for the respondent strongly opposed the petition stating that in this case, P.W.1 had been examined on 04.02.2019, and P.W.2 mother was examined on 22.01.2020. P.W.3 and P.W.4, who are Child Helpline Inspectors, were examined on 08.10.2020. Thereafter, 6 more witnesses have been examined and now the case is posted for examination of Investigating Officer. At the penultimate stage, only to drag on the proceedings, the above petition is filed. In the meanwhile, the petitioner, being the neighbour of the P.W.1 and P.W.2, have been constantly harassed and threatened to resile from their earlier statement. Further as per Section 33(5) of POCSO Act, the victim girl cannot be summoned again and again and the lower Court, by a detailed order, had dismissed the recall of P.W.1 and allowed to recall P.Ws.2 to 4 .

5. I have considered the submissions made on either side and perused the materials available on records carefully.

6. Considering the submissions and the perusal of the materials, it is seen that in this case, P.Ws.1 to 4 have been examined in the year 2019 and 2020. Thereafter, almost all the witnesses have been examined except the Investigating Officer. At this stage, recalling P.W.1 once again is nothing, but a harassment, for which, under Section 33(5) of the POCSO Act protection has been given to the victim child. Recalling P.W.1 would amount to defeating the purpose for which the said provision has been incorporated. Further no proper reason has been given for recalling P.W.1. The petitioner can very well put forth the defence through P.Ws.2 to 4. In view of the same, this Court is not inclined to allow the petition.

7. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrp



To

1. The Inspector of Police,
Ethapur Police Station,
Salem District.

2. The Hon'ble POCSO Committee,
High Court, Madras.

3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.13688 of 2021

KSM[co]
NSK 14/09/2021