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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15460 of 2021

K.Abishek

...Petitioner/ Accused

Versus

The Inspector of Police (SHO)
Panruti Police Station,
Cuddalore District.
(Crime No.611/2019)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 11.08.2021 in Crl.M.P.No.664 of 2021 in Spl.SC.No.10 of 2020 on the file of the Special Court for Trial of Cases under POCSO Act, Cuddalore.

For Petitioner : Mr.S.Lingesh

For Respondent : Mr.A.Damodaran

Government Advocate (Crl.Side)

ORDER

This petition has been filed to set aside the order dated 11.08.2021 in Crl.M.P.No.664 of 2021 in Spl.SC.No.10 of 2020 on the file of the Special Court for Trial of Cases under POCSO Act, Cuddalore.

2. The petitioner is the accused in Spl.S.C.No.10 of 2020 and he is facing trial, for the offence under Sections 366 and 376(3) IPC r/w Section 5(L), 6 of POCSO Act, 2012.

3. The contention of the petitioner is that the petitioner was furnished with 207 Cr.P.C., copies on 19.10.2020. On 21.11.2020, the petitioner filed a memo stating that in the charge sheet, there are 20 listed witnesses, out of which, only statement of 18 witnesses have been furnished and the remaining two witnesses, viz., LW15 and LW20 were not furnished. Further, he submitted that 164 statement of the victim was also not furnished. The trial Court considered the said memo and given a



finding that if the 164 statement of the victim not furnished, 207 Cr.P.C. could not be completed and hence, directed the respondent police to furnish a copy of the 164 statement. The statement was furnished only on 30.04.2021 and in the meanwhile, the witnesses were examined on 22.04.2021. The petitioner submitted that since 207 Cr.P.C., not completed, 164 statement of the victim not given to him and he became handicapped and unable to cross examine the witnesses. In this case, PW1 is the victim, PW2 is the mother, PW3 is the father, PW4 and PW5 are the relatives of the victim/PW1.

4. The specific case of the petitioner is that the petitioner and the victim loved each other. Both are student, whereas the petitioner is a Final Year Engineering Student and the victim is a School Student. Initially, the victim's parents lodged a complaint stating that "girl missing" and a case was registered. Thereafter, the case came to be registered for the offence under Sections 366 and 376(3) of IPC r/w Section 5(L), 6 of POCSO Act, 2012. The victim was in love with the petitioner. Since the victim girl and the petitioner belong to different community, the victims' parents opposed the love and made an arrangement for marriage of the victim girl, against her wish. Hence, she called the petitioner and forcing to company with her. The petitioner had no other choice, joined the victim. This is the victim's statement before the Police as well as in her 164 statement. This vital aspects has to be put to the victim as well as to the other witnesses.

5. The learned Government Advocate (Crl.Side) has submitted that on the complaint of victim's father, a case came to be registered and thereafter, victim's father was enquired. In the meanwhile, the victim's father filed HCP before this Court and as per the order of this Court, the victim girl was secured and later she joined with her parents. Investigation completed and charge sheet was filed with LW1 to LW20. The petitioner's contention that the statements of LW15 and LW20 were not furnished. However, there is no such statement of LW15 and LW20, 164 statement was served to the petitioner on 30.04.2021.

6. Considering the submission and perusing the materials, it is seen that the statement of the victim under Section 164 Cr.P.C. had been furnished only on 30.04.2021. PW1 to PW5 have been examined before the completion of the proceedings under Section 207 Cr.P.C. Hence, this Court finds that dismissing the petition filed under Section 311 Cr.P.C., by the Trial Court is not proper.

7. In view of the same, this Court is inclined to set aside the order dated 11.08.2021 in Crl.M.P.No.664 of 2021 in



Spl.SC.No.10 of 2020. The petitioner is permitted to recall PW1.
Accordingly, this petition is allowed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Special Judge,
Special Court for Trial of Cases,
Cuddalore.

2.The Inspector of Police (SHO)
Panruti Police Station,
Cuddalore District.
(Crime No.611/2019)

3.The Public Prosecutor
High Court, Madras.

+2 cc to M/s.S.Lingesh, Advocate, S.R.No.44757

CRL.O.P.No.15460 of 2021

GP(CO)
KKV/16/09/2021