



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17199 of 2021

and

Crl.M.P.No. 9432 of 2021

1. Ajith @ Ajithkumar,
S/o. Munisamy

2. Rajasekar,
S/o. Munisamy

3. Sathish,
S/o. Sudhakar

4. Gomathi,
W/o. Munisamy

5. Munisamy,
S/o. Parasuraman

... Petitioners

Versus

State rep. by
The Inspector of Police,
Panamadangi Police Station,
Vellore Dt.
(Crime No. 57 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 passed by the Special Judge for Exclusive Trial of cases under POCSO Act, Vellore, Vellore District in Crl.M.P.No.558 of 2021 in Spl.S.C.No.40 of 2019 dated 28.07.2021 and allow the above Criminal Original Petition.

For Petitioner	:	Mr.S.Vijayakumar
For Respondent	:	Mr.A.Damodaran, Addl. Public Prosecutor

ORDER

(This case has been heard through Video Conference)

The petitioners, who are facing trial in Spl.S.C.No.40 of 2019 for an offence under Section 366(A) I.P.C. including the offence under Section 6 of POCSO Act, have filed the petition under Sec.311 of Crl.P.C. in Crl.M.P.No. 558 of 2021 to recall P.W.2 victim girl. The Trial Court dismissed the



2. The contention of the petitioners is that when P.W.2 was examined in this case, on that day, the petitioners' counsel did not appear and thereafter, recorded no cross. In this case, totally 17 witnesses examined, all the other witnesses cross-examined without delay. The further contention of the petitioners is that the 1st petitioner, adolescent, aged about 19 years, had love affairs, infatuation with the victim girl and eloped with her, stayed at various places at Chennai and neighbourhood for quite some time. Thereafter, they developed difference of opinion. In the meanwhile, victim's father filed Habeas Corpus Petition, victim girl was secured, she produced a letter stating that she is not willing to join her parents and she is still interested to continue her relationship with the 1st petitioner. As regards other petitioners', who are parents and relatives of A1, they have nothing to do with the act of A1 in this case, who, on his own, independently, due to love affair, not knowing the seriousness of the same committed the offence. He would further submit that the voluntariness of the victim girl have to be put to the witness in view of statutory presumption stares against them, to probablise the defence, cross-examination is necessary. Otherwise, great prejudice would be caused.

3. The learned Additional Public Prosecutor strongly objected for recalling P.W.2 stating that in this case, totally 17 witnesses examined, all the other witnesses have been cross-examined and questioning under Section 311 of CrI.P.C. completed. Now, the case is at the defence and arguments stage. At this stage, belatedly, this petition filed. The Special Sessions case is of the year 2019. P.W.2 was examined on 09.07.2019 and thereafter, 15 witnesses have been examined, till such time, the petitioners kept quite and now, to protract the proceedings, the petitioners filed the above petition. The Trial Court by giving proper reasons dismissed the same. Hence, he objected.

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

5. The learned counsel for petitioners would submit that the Trial Court has restricted functioning due to lock-down, the petitioners could not immediately file a petition under Section 311 of CrI.P.C. Hence, the delay in filing Section 311 petition. However, almost all the witnesses were cross-examined then and there. The occurrence narrated by P.W.2 in detail in her 164 statement and in her evidence, clearly shows P.W.2 admits her relationship, elopement with the A1 on her own. As regards the other petitioners, they have nothing to do with the acts of P.W.2 and A1. In this case, since the statutory presumption is against them, the cross-examination of P.W.2 is necessary. In view of the same, and on undertaking given by the petitioners that they would cross-examine P.W.2 on the day of her recall without any delay. Testing the



evidence by cross-examination would be beneficial for the lower court to arrive at a just decision. In view of the same, this Court directs the Lower Court to recall P.W.2 and permit petitioners to cross-examine P.W.2 on the day, on her appearance on condition to pay a cost of Rs.5000/-. The Lower Court to ensure the cost is handed over to the P.W.2 without delay.

6. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rpp/nr

To

1. The Special Judge for
Exclusive Trial of cases under POCSO Act,
Vellore
2. The Inspector of Police,
Panamadangi Police Station,
Vellore Dt.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Vijayakumar, Advocate, S.R.No.49337

CRL.O.P.No.17199 of 2021

GMR (CO)
B.VC (24/09/2021)