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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.18745 OF 2021

AND

CRL.M.P.NO.10312 OF 2021

P.Manikandan

... Petitioner

.Vs.

The State,
Rep by its, The Inspector of Police,
Anamalai Police Station,
Coimbatore District.
(Crime No.432 of 2018).

... Respondent

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set-aside the order dated 20.09.2021 in CMP.No.613 of 2021 in Spl.CC.No.89 of 2019 on the file of Sessions Judge (FAC), Special Court for Exclusive Trial of Cases under POCSO Act at Coimbatore and permit the petitioner to cross examine the prosecution witnesses PW3, PW4, PW11, PW19 to PW24.

For Petitioner : Mr.K.Myilsamy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 20.09.2021, made in C.M.P.No.613 of 2021 in Special C.C.No.89 of 2019 passed by the learned Sessions Judge (FAC), Special Court for Exclusive Trial of cases under the Protection of Children from Sexual Offence Act, 2012, Coimbatore.

2. The learned counsel for the petitioner submitted that the petitioner and the victim girl were in love with each other. On



coming to know about the same, the parents of the victim girl made arrangement for their daughter's marriage with someone against her wish. Due to which, she was in an agitated mood and forced the petitioner to take her away, otherwise she would end life life. Having no other option, the petitioner accompanied the victim girl and thereafter, both of them appeared before the respondent Police. Later, a case was registered against the petitioner and the statement of the victim girl was recorded under Section 161 Cr.P.C. The learned counsel further submitted that even the victim girl in her statement recorded under Section 161 Cr.P.C., stated about her love affair with the petitioner and also she voluntarily joined him. In this case, the petitioner hails from Salem District and is having very poor background. The trial in this case is proceeding in the Special Court for Exclusive Trial of cases under the Protection of Children from Sexual Offence Act, 2012, Coimbatore, due to which, the petitioner is unable to attend the Court on all hearing dates. The petitioner hails from a poor social and education background and he was not aware of the proceedings for the past years. In the absence of the petitioner, the trial was progressed and the witnesses were examined. In this case, the petitioner has filed the petition under Section 311 Cr.P.C., to recall the witnesses PW3/victim girl; PW4/brother of the victim girl; PW11/Judicial Magistrate No.II, Pollachi, who recorded the statement of the victim girl under Section 164 Cr.P.C; PW19 & PW20/Doctors, who examined the victim girl and the petitioner respectively; PW21/Sub Registrar, who gave the age certificate to the victim girl; PW22, who registered the FIR; PW23, who conducted the initial investigation, PW24, who conducted further Investigation and filed final report. The trial Court, by order, dated 20.09.2021, without considering the petition, dismissed the same.

3. The learned counsel further submitted that the petitioner is facing prosecution for the offence which is serious in nature. The statutory presumption is against the petitioner and to probablize his defence, he has to necessarily cross examine the witnesses. Hence, he prayed for one chance to cross examine the witnesses.

4. The learned Additional Public Prosecutor appearing on behalf of the 1st respondent Police submitted that this is the case of the year 2019. From the year 2019, the petitioner has been dragging on the case successfully. The petitioner has given no reason before the trial Court as well as this Court for what reason the witnesses to be recalled. The trial Court in its order in paragraph No.5 had clearly listed the dates, on which the witnesses have been examined. Now, before the trial Court, the petitioner was questioned under Section 313 Cr.P.C., on 07.09.2021 and the case is at the penultimate stage. At this juncture, allowing the petition to recall the witnesses would



further delay the proceedings and defeat the purpose for which the Protection of Children from Sexual Offence Act, 2012 has been brought in. Hence, he strongly opposed this petition.

5. On considering the rival submissions and on perusal of the materials, it is seen that none of the witnesses have been cross examined by the petitioner. The evidence is to be completed only after completion of cross examination by the defence side and that would be beneficial for the trial Court to arrive just a decision. In the statement recorded under Section 164 Cr.P.C., the victim girl admitted her love affair with the petitioner.

6. In this case, PW4 is the brother of the victim girl, PW21 is the Sub Registrar and PW22 to PW24 are the Police personnels. This Court is inclined to allow the petitioner to cross examine PW4, PW21 to PW24.

7. Hence, the trial Court is directed to fix a date and recall the witnesses PW4, PW21 to PW24 within a period of two weeks from the date of receipt of a copy of this order. On the date of presence of the witnesses, the petitioner is to cross examine them then and there without seeking unnecessary adjournments.

8. In view of the above, the order, dated 20.09.2021, made in C.M.P.No.613 of 2021 in Special C.C.No.89 of 2019 passed by the Sessions Judge (FAC), Special Court for Exclusive Trial of cases under the Protection of Children from Sexual Offence Act, 2012, Coimbatore is hereby set aside in so far as PW4, PW21 to PW24 are concerned. Accordingly, this Criminal Original Petition is Partly-Allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Court for Exclusive
Trial of cases under the Protection
of Children from Sexual Offence Act, 2012,
Coimbatore.



2. The Inspector of Police,
Anamalai Police Station,
Coimbatore District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Myilsamy, Advocate, S.R.No.57332

CRL.O.P.NO.18745 OF 2021

NK(CO)
PBS/26/11/2021
PBS/03/12/2021