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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.19662 OF 2021

AND

CRL.M.P.NO.10723 OF 2021

Settu

... Petitioner

.Vs.

State Rep. by the Inspector of Police,
Kitchipalayam Police Station,
Rasipuram, Salem District,
Cr.No.244 of 2015.

... Respondent

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 27.09.2021 passed in Crl.M.P.No.477 of 2021 in Old SSC.No.18 of 2017 and New SSC.No.41 of 2019 on the file of the Special Court for exclusive trial of cases under POCSO Act, Salem and to allow the above Criminal Original Petition.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.R.Vinoth Raja
Government Advocate
[Crl. Side]

O R D E R

This Criminal Original Petition is filed to set aside the order dated 27.09.2021 passed in Crl.M.P.No.477 of 2021 in Old SSC.No.18 of 2017 and New SSC.No.41 of 2019 on the file of the Special Court for exclusive trial of cases under POCSO Act, Salem and to allow the above Criminal Original Petition.

2. The petitioner/accused in SSC.No.41 of 2019 had filed a recall petition to recall PW1 and PW2 i.e. the mother and



brother of the victim girl in CMP.No.477 of 2021. The trial court by its order dated 27.09.2021, had dismissed the same. Against which the present petition is filed.

3. The contention of the petitioner is that the petitioner voluntarily surrendered before the lower Court on 12.02.2021, to recall the Non-Bailable Warrant issued against him and filed a petition under Section 70(2) Cr.P.C. to recall the Non-Bailable Warrant. The trial court had dismissed the petition and remanded the petitioner to judicial custody. PW.1 and PW.2 were examined by the prosecution on 06.03.2021 and 31.03.2021, when the petitioner was in confinement, the earlier defence counsel had cross examined the said witnesses and the learned defence counsel did not raise crucial and vital aspects during the cross examination. The petitioner's Non-Bailable Warrant was recalled on 06.09.2021, since the petitioner was in prison, he was unable to give proper instruction to the learned defence counsel. As soon as the petitioner released on bail, he had engaged the present counsel and on going through the deposition of PW.1 and PW.2, the petitioner found that the cross examination of PW.1 and PW.2 are insufficient and filed the above said Crl.M.P.No.477 of 2021.

4. The learned Government Advocate [Crl. Side] submits that the offence had taken place in the year 2015, thereafter charge sheet has been filed in the year 2017, thereafter, the petitioner was evading summons, later on receipt of summons the petitioner appeared before the Mahila Court, Salem only on 27.06.2019 and trial was fixed on 02.08.2017. The petitioner had filed a discharge petition in Crl.M.P.No.1142 of 2017, seeking discharge from the charges and trial could not be proceeded and ultimately the said petition was dismissed on 05.10.2017. In the mean while, the petitioner had absconded and Non-Bailable Warrant was issued on 16.02.2018 and recalled on 13.06.2018 and the case was taken up for trial and the summons were issued to LW1, LW2, LW4 and LW5 and again the petitioner absconded and NBW was issued. As the accused was absent and NBW was issued, the witnesses viz., LW1, LW2, LW4 and LW5 could not be examined on 22.01.2019. LW3, victim girl immediately after the occurrence had committed suicide and ended her life on 02.09.2015. In view of the same, the victim girl could not be examined.

5. LW1, father of the victim girl died after the sudden death of his daughter and he could not be examined. Finally on 20.11.2019, LW1 father of the victim girl and LW3 victim girl were dispensed with and summons issued for the other witnesses. In the mean while, the petitioner again absconded on 11.02.2021 and later surrendered only on 12.02.2021 and with such delay the trial in the case is not progressed. When the Non-Bailable Warrant was to be executed, the petitioner absconded, the



petitioner is adopting the dilatory practice, protracting the trial.

6. Considering the rival submissions and on perusal of the materials, this Court finds that the petitioner has filed this present petition to protract the proceedings, since it is a case of POCSO Act filed in the year 2017 and kept pending for the past four years and the Lower Court had rightly dismissed the same. The petitioner is unable to give any tangible reason to recall PW.1 and PW.2. Further the Lower Court had passed a detailed order and this Court is not inclined to interfere with the order passed by the lower Court.

7. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for exclusive trial of
cases under POCSO Act,
Salem.
2. The Inspector of Police,
Kitchipalayam Police Station,
Rasipuram,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

CRL.O.P.NO.19662 OF 2021

RGN(CO)
PBS/17/11/2021