



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.23327 of 2021
and Crl.M.P.No.12773 of 2021

M/Ezhumalai

... Petitioner/Accused

Versus

The State, rep. by
The Inspector of Police,
Banavaram Police Station,
Ranipet District,
Crime No.143 of 2019.

... Respondent/Complainant

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 17.11.2021, passed in Crl.M.P.No.832 of 2021 in Spl.S.C.No.143 of 2019 by the learned Special Judge for exclusive trial of cases under POCSO Act, Vellore.

For Petitioner :Mr.R.Chakkaravarthy

For Respondent :Mr.E.Raj Thilak

Additional Public Prosecutor

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O R D E R

This Criminal Original Petition is filed to call for the records and set aside the order dated 17.11.2021, passed in Crl.M.P.No.832 of 2021 in Spl.S.C.No.143 of 2019 by the learned Special Judge for exclusive trial of cases under POCSO Act, Vellore.

2.The above said Crl.M.P.No.832 of 2021 in Spl.S.C.No.143 of 2019 is filed to recall PW2, victim girl.

3.The contention of the petitioner is that on 23.10.2020, PW2 was examined. On that day, the learned Senior Counsel appearing for the petitioner before the lower Court was in



Chennai and he was unable to attend the trial Court, since he had developed some sudden illness and he had instructed his junior counsel to put formal questions and seeks time for further examination and hence PW2 was partly examined. Thereafter, the trial Court closed PW2 cross examination on 23.10.2020. The petitioner having valid defence in the above case, therefore, the petitioner filed a petition under Section 311 Cr.P.C. to recall PW2 for cross examination. On the contrary, the trial Court had dismissed the CrI.M.P.No.832 of 2021.

4.He further submits that the victim girl in her 164 statement had stated that going alone with the petitioner starting from Chennai, Bangalore, Ooty and Mysore. When they reached Kaveripakkam, Vellore, they were apprehended by the police and the petitioner herein had left the victim girl at Kaveripakkam bus stop, for fearing his life. The victim girl/PW2 had given a false deposition, which is in variance to her 164 statement. Hence the attention of these aspects to be drawn. She had falsely implicated the petitioner, this aspect is to be put to PW2. For the above said reason alone PW2 has to be cross examined. The victim girl is available in the village. The case is still pending before the trial court, there would be delay by calling PW2, on the other hand, it would be beneficial for the respondent and the trial Court to arrive at a just decision of the case.

5.The learned Additional Public Prosecutor submits that the petitioner had already cross examined PW2 and now recalling PW2 would amount to causing harassment to her, which cannot be permitted. The petitioner not made out any exceptional circumstances to recall PW2. In this case, all the witnesses have been examined, the only witnesses i.e. the Investigating Officers have to be examined. The trial Court posted the case on 27.12.2021, for examination of the Investigating Officer.

6.Considering the submissions and on perusal of the materials, this Court finds that there are some variance in the 164 statement and to the deposition before the trial Court. The cross examination of PW2 on 23.10.2020 appears to be not elaborate further certain of the vital aspect have to be put to the witness. If not the petitioner would be denied his right of cross examination and he would be put to great hardship. The petitioner has to probablise his defence and give explanation for the evidence available against him, which can be done by the petitioner only by way of cross examination. Further presumption is starring against the petitioner. In view of the same, this Court is inclined to recall PW2 for further cross examination.



Further LW10, Radiologist confirms the victim girl age as 18 years above and 21 years below, which cannot be brushed aside lightly.

7. Accordingly, this Criminal Original Petition stands allowed and the order dated 17.11.2021, passed in CrI.M.P.No.832 of 2021 in Spl.S.C.No.143 of 2019 by the learned Special Judge for exclusive trial of cases under POCSO Act, Vellore is hereby set aside. The trial Court is directed to recall PW2 and the petitioner is directed to cross examine PW2 on the date of her appearance. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The Special Judge for exclusive trial
of cases under POCSO Act,
Vellore.

2.The Inspector of Police,
Banavaram Police Station,
Ranipet District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Chakkaravarthy, Advocate SR.No.67587

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BP(CO)

CB(11/01/2022)