



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl O.P. (MD)No.18192 of 2021

and

Crl M.P. (MD)No.9983 of 2021

WEB COPY

Sahaya Selvan

... Petitioner/Sole Accused/Sole Accused

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Kanyakumari
through The Special Public Prosecutor
For POCSO Offences,
Nagercoil,
Kanyakumari District.

... 1st Respondent/Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order made in Crl.M.P.No.49 of 2021 in Cr.No.60 of 2017 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Kanyakumari, order dated 20.01.2021.

For Petitioner : Mr.G.Anto Prince
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

Heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

2.The petitioner is facing trial in Spl.S.C.No.16 of 2019 on the file of the Special Court for exclusive trial of POCSO Act cases in Nagercoil. Petitioner's earlier Counsel had failed to cross examine the prosecution witnesses. Therefore, the petitioner filed Crl.M.P(MD).No. 49 of 2021 to recall them. The Court below by order dated 20.01.2021 permitted recall of P.W.1, P.W.3 and P.W.4, on payment of necessary batta and necessary process fee. However, the petitioner's request to recall P.W.2 was denied. Aggrieved over the same, this Criminal Original Petition has been filed. The learned Counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to allow this Original Petition and to permit to recall of P.W.2.



3.The learned Additional Public Prosecutor for the respondents submitted that the impugned order is a well considered one and does not require any interference.

4.I carefully considered the rival contentions and went through the materials on record.

5.The accused facing trial in POCSO Act case has to rebut the presumption raised against him. Therefore, cross examination of the victim is imperative. Of course, I will not find fault with the order of the Court below. The Court below had rightly held that the accused cannot be permitted to harass the victim by repeatedly summoning her. However, taking note of the facts and circumstances and in the interest of justice, I am inclined to grant one more opportunity to the petitioner. The petitioner's Counsel states that he would examine P.W.2 on the very day when she is produced for cross-examination. The petitioner makes it clear that the cross-examination will be concluded on the same day and that for any reason it will not spill over to any other day. Recording the said undertaking, the order impugned in this Criminal Original Petition is modified and the petitioner is permitted to recall P.W.2 also, of course on payment of necessary batta and process fee. This Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

mga/csm

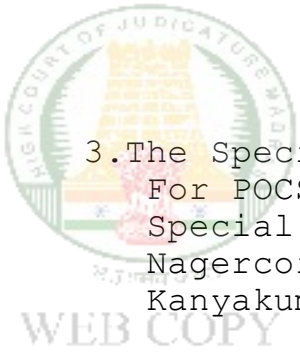
Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Special Court for Exclusive Trial of cases under POCSO Act,
Kanyakumari.

2.The Inspector of Police,
All Women Police Station,
Kanyakumari.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Special Public Prosecutor
For POCSO Offences,
Special Court for POCSO Act,
Nagercoil,
Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ANTOPRINCE, Advocate (SR-36178[F] dated 26/11/2021)

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RS (09.12.2021) 3P 6C