



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2648 of 2022

Mathiyalagan

...Petitioner

-Vs-

The State through
Inspector of Police,
All Women Police Station
Mettur,
Salem District.

...Respondent

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to set aside the order of Sessions Judge, POCSO Court, Salem dated 13.12.2021 in Crl.M.P.No.726 of 2021 in Spl.S.C.No.24 of 2020 in as much as dismissing the petition filed to recall the prosecution witnesses Nos.2,4,5,6 and 8.

For Petitioner : M/s.Conscious Ilango

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

O R D E R

This petition has been filed seeking to set aside the order dated 13.12.2021 passed in Crl.M.P.No.726 of 2021 in Spl.S.C.No.24/2020 on the file of the learned Sessions Judge for cases under the POCSO Act, Salem and also to recall PW2, PW4, PW5, PW6 and PW8.

2.The learned counsel for the petitioner submitted that the petitioner is facing trial for the charges under Section 9(m) r/w 10 of the POCSO Act. During Covid pandemic period there was a communication gap between the petitioner and his counsel and thereby he was unable to instruct the counsel properly and during that period, the prosecution has examined the witnesses PW1 to PW9. The petitioner had not cross examined other witnesses viz., 1 to 4, 6 and 9 and he has partially cross examined the other witnesses. The charges against the



petitioner are under the POCSO Act and a heavy burden is cast upon the petitioner to rebutt the presumption. Thereby, in order to have a fair trial, the petitioner had filed a petition to recall the witnesses. The trial Court had partly allowed the recall petition and had permitted the petitioner to recall PW1, PW3 and PW9 and in respect of the other witnesses, the trial Court had dismissed the petition. The witnesses PW2, 4 and 6 were not at all cross examined and witness No.8 was partially examined. P.W.2 is the victim, P.W.4 is the witness for observation mahazar, P.W.6 is the Head Master (incharge) who has issued the birth certificate, P.W.8 is a Doctor who has examined the victim girl. If the petitioner is not allowed to recall P.W.2, 4, 6 and 8 and cross examine them great prejudice would be caused to the petitioner. He would further submit that if one chance is given, the petitioner is prepared to cross examine the witnesses on the very same day of their appearance and the petitioner is also ready to abide by any stringent condition that may be imposed on him. The petitioner is also prepare to incur the expenses on the witnesses appearing before the Court.

3. The learned Additional Public Prosecutor would submit that the petitioner is facing trial for the offences under the POCSO Act and the witnesses cannot be recalled at the whims and fancies of the petitioner.

4. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent and perused the materials available on record.

5. Since the petitioner is facing serious charges for the offence under POCSO Act, this Court enquired whether the respondent would able to produce the witnesses for cross-examination on the next date of hearing.

6. In reply, the learned Additional Public Prosecutor on instructions from the respondent Police would submit that the witnesses are very much available and the respondent shall produce them before the Court on any date fixed by the trial Court.

7. I have gone through the order passed by the learned Trial Judge. He had interest of the speedy trial and not to cause harassment or hardship to the witnesses has dismissed the petition. The trial Judge has rightly passed the order following the mandate of the judgment of the Hon'ble Apex Court in Vinothkumar v. State of Punjab reported in 2015 (1) MLJ 288. I do not find any infirmity in the order passed by the trial Judge. However, since, the petitioner is facing trial for serious charges, this Court is of the opinion that one chance



may be given to the petitioner to recall the witnesses for cross examination, in the interest of justice and in the interest of fair trial.

8. In view of the above, the petitioner is permitted to recall PW2, PW4, PW6 and PW8 on terms. Accordingly, the petitioner is directed to file an application along with process memo for payment of Rs.10,000/- before the Trial Court. On such filing the respondents shall serve summons on the witnesses 2, 4, 6 and 8 and produce them for cross-examination before the Trial Court on the next hearing date i.e. on 15.02.2020 or any other date fixed by the learned Trial Judge. The learned Trial Judge shall disburse Rs.2,500/- each to the witnesses on the same day. Further, the petitioner shall file an affidavit of undertaking that the witnesses will be cross-examined on the same day of their production before the trial Court. In the event of the petitioner not cross-examining them on that day, the petitioner shall lose his chance to cross-examine them in future.

9. With the above direction, this Criminal Original Petition stands allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nr/tsh

To

1. The Sessions Judge for cases under the POCSO Act, Salem.
2. The Inspector of Police,
All Women Police Station
Mettur, Salem District.
3. The Public Prosecutor,
High Court, Madras.

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NSK 11/02/2022