



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.6463 OF 2022

AND

CRL.M.P.NO.3624 OF 2022

Naveen Kumar

... Petitioner

Versus

The State Rep. by,
The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
(Crime No.4/2020).

... Respondent

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.848 of 2021 in Special S.C.No.48 of 2020, dated 15.12.2021 on the file of the Sessions Judge, Special Court for exclusively trial of POCSO Acts Cases, Salem and consequently allow the same.

For Petitioner : Mr.N.U.Pressanna

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order, dated 15.12.2021, made in Crl.M.P.No.848 of 2021 in Special S.C.No.48 of 2020 passed by the learned Sessions Judge, Special Court for exclusively trial of POCSO Act Cases, Salem/trial Court.

2. Heard the learned counsel appearing for the petitioner and learned Government Advocate (Crl.side) appearing for the respondent Police and perused the materials available on record.



3. It is stated that at the time of cross examination, the Advocate, who is now appearing for the petitioner/accused before the trial Court, was unable to cross examine the witnesses viz., PW2/victim girl and PW3/Doctor since the petitioner's previous Advocate all of sudden withdrew his vakalath. The reason assigned by the learned counsel for the petitioner is without any materials. The trial cannot be protracted for such reasons. As a matter of fact that recall of the witnesses cannot be ordered once the Session trial is commenced, it has to be go on day to day basis and the same cannot be protracted at the instance of counsel on record or accused. Therefore, this Court is of the view that the reason assigned by the learned counsel has no merit.

4. However, considering the nature of crime and it attracts the punishment for upto 10 years, fair chance of cross examination cannot be defeated merely on lawyer's in action. Hence, this Court is of the view that one more final chance has to be given to cross examine the witnesses viz., PW2/Victim girl and PW3/Doctor subject to the payment of cost of Rs.15,000/- (Rupees fifteen thousand only) payable before the trial Court within a period of one week from the date of receipt of a copy of this order. On receipt of the amount, the amount of Rs.10,000/- shall be paid to PW2/Victim girl and the balance amount of Rs.5,000/- shall be paid to PW3/Doctor. On such payment, the trial Court shall fix specific date to summon PW2/Victim girl and PW3/Doctor for cross examination. The cross examination of those two witnesses shall be completed on the same day when the witnesses present before the trial Court. In the event of the petitioner failed to cross examine the witnesses on the same day, he will lose the right of cross examination of those witnesses. After the cross examination, the trial Court shall proceed with the trial on day to day basis.

5. Accordingly, this Criminal Original Petition is allowed and as a sequel, the order, dated 15.12.2021, made in Crl.M.P.No.848 of 2021 in Special S.C.No.48 of 2020 passed by the learned Sessions Judge, Special Court for exclusively trial of POCSO Act Cases, Salem is set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Court for exclusively
Trial of POCSO Act Cases,
Salem.

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

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.U.Pressanna, Advocate, S.R.No.34701

CRL.O.P.NO.6463 OF 2022

SKM(CO)
PBS/01/07/2022