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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.9330 of 2022

P.Balaji,
S/o.Pitchandi

...Petitioner

Vs

The State represented by,
The Inspector of Police,
All Women Police Station,
Melmaruvathur Police Station,
Melmaruvathur,
Kanchipuram District.
(Crime No.4 of 2016)

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., pleaded to set aside the order passed in Crl.M.P.No.1265 of 2021 in Spl.S.C.No.26 of 2019 dated 21.03.2022 on the file of the Sessions Judge, Special Court for Exclusive Trial of case under POCSO Act, Chengalpattu.

For Petitioner : Mr.K.G.Senthilkumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petition has been filed seeking to set aside the order passed in Crl.M.P.No.1265 of 2021 in Spl.S.C.No.26 of 2019 dated 21.03.2022, on the file of the Sessions Judge, Special Court for Exclusive Trial of case under POCSO Act, Chengalpattu.

2. The learned counsel for the petitioner would submit that the petitioner is facing trial for offences under Section 376 (1), 450, 363, 375(b) of I.P.C., r/w Section 4 and 3(b) of POCSO Act, 2012 in Spl.Case.No.26 of 2019, before the Special Court, Chengalpattu. The learned counsel for the petitioner would further submit that the petitioner had filed an application to recall P.W.14 and P.W.15 for cross-examination. However, the Trial Judge had dismissed the said application by an order dated



21.03.2022. He would further submit that though there had been serious lapses on the side of the petitioner, the petitioner is facing trial for serious offences under POCSO Act, 2012. As per Section 29 of the POCSO Act, a statutory presumption is available as against the petitioner and if the petitioner is not permitted to recall and cross-examine the witnesses, that would cause grave prejudice to the petitioner.

3. He would further submit that P.W.14 and P.W.15 are the official witnesses. P.W.14 is the Investigating Officer who had registered the case and conducted the investigation and P.W.15 is the officer who had filed the final report before the court concerned and they are very much in service.

4. The learned counsel for the petitioner would submit that earlier the petitioner had filed an application to recall the officers in CrI.M.P.No.1122 of 2019. The Trial Court by an order dated 07.06.2019 was pleased to allow the application to recall the witnesses on imposition of cost of Rs.500/- and the petitioner had also paid the cost. However, P.W.14 was present before the Trial Court for cross-examination on 02.11.2021 and P.W.15 was present before the Trial Court for cross-examination on 23.11.2021. The learned counsel engaged by the petitioner was suffering from Dengue Fever from 01.11.2021 to 24.11.2021, thereby, he was unable to present before the Trial Court to cross-examine the witnesses.

5. The learned counsel for the petitioner would further submit that the Courts were also not properly functioning on account of out break of Covid-19 pandemic and the petitioner was also unable to engage another counsel to cross-examine the witnesses. He would reiterate that if the petition is allowed and the witnesses are directed to appear before the Trial Court on a particular date, the petitioner undertakes to cross-examine them on the same day of their appearance and the petitioner is also prepared to pay the cost for the appearance of the witnesses. Thereby, he would seek to set aside the order.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.14 was examined in chief on 26.12.2018 and P.W.15 was examined in chief on 27.05.2019. He would further submit that, earlier, the petitioner had filed an application to recall P.W.14 and P.W.15 and it was also allowed. When they appeared before the Court, the petitioner failed to cross-examine them. He would further submit that the Trial Court rightly finding that the petitioner failed to avail the opportunity and was delaying the trial, had dismissed the



application. He would further submit that the case stands posted to 27.04.2022, for further arguments.

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

8. The Trial Court rightly finding that the petitioner has not availed the opportunity and had willfully failed to cross-examine the witnesses in order to delay trial and relying upon various judgments of the Hon'ble Supreme Court particularly the Judgment in the case of Vinoth Kumar Vs the State of Punjab, had dismissed the application.

9. I do not find any infirmity in the order passed by the learned Trial Judge. However, taking into consideration the fact that the petitioner is facing serious charges for the offences punishable under Sections 376(1), 450, 363, 375(b) r/w Section 4 and 3(b) of POCSO Act, 2012 and that there is statutory presumptions under Section 29 of the POCSO Act, 2012 operating against the petitioner. This Court is of the opinion that unless PW14 and PW15, the official witnesses are permitted to be cross-examined, it would amount a case of non-rebutal causing grave prejudice to the petitioner. The evidence of PW14 and PW15 is necessary for arriving at a just decision in the case. Hence in the interest of justice and fair trial this Court is of the further opinion that the petitioner may be permitted to recall and cross-examine PW14 and PW15.

10. In view of the above, the impugned order passed by the Trial Court dated 21.03.2022 stands set aside. The Trial Court shall recall PW14 and PW15 for cross-examination on the following conditions:

- i. The petitioner shall deposit an amount of Rs.15,000/- before the Trial Court on the next hearing date.
- ii. The Trial Court shall fix a date for appearance of PW14 and PW15 and the petitioner shall cross-examine the witnesses on the same day of their appearance.
- iii. On failure of the petitioner to cross-examine the witnesses on the same day of their appearance, he would lose a chance of cross-examination.
- iv. The Trial Court shall disburse an amount of Rs.7,500/- to each of the witnesses on the same day of their appearance.
- v. The petitioner shall give a written undertaking that he would without any further delay argue the case.



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vi. The Trial Judge shall take every effort to dispose the case as expeditiously as possible.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station,
Melmaruvathur Police Station,
Melmaruvathur,
Kanchipuram District.
 2. The Sessions Judge,
Special Court for Exclusive Trial of case
under POCSO Act,
Chengalpattu.
 3. The Public Prosecutor,
High Court of Madras.
- +1 CC to Mr.K.G.Senthilkumar, Advocate sr 28542

Cr1.O.P.No.9330 of 2022

SP(26/04/2022)