



Crl.O.P.No.13373 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.13373 of 2022
and Crl.M.P.No.7155 of 2022

K. Gunasekar

... Petitioner

-Vs-

State by Inspector of Police,
All Women Police Station,
Town Police Station,
Salem District,
Crime No.420 of 2020

... Respondent

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 19.04.2022 passed in Crl.M.P.No.148 of 2022 in Spl.SC.No.34 of 2020 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem with respect of dismissing the application to recall PW2 in the above case and to allow the above Criminal Original Petition.

For Petitioner : M/s.R.Nalliyappan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 19.04.2022 passed in Crl.M.P.No.148 of 2022 in



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Spl.SC.No.34 of 2020 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem with respect of dismissing the application to recall PW2 in the above case and to allow the above Criminal Original Petition.

2. The case of the prosecution is that the daughter of the defacto complainant namely Sasivarthini aged about 16 years has been kidnapped by the petitioner. The victim girl stated that she got married with the petitioner and stayed with him for two days and had sexual relationship. Later the defacto complainant/PW1 made a complaint against the petitioner before the respondent police and a case was registered under Section 366, 342 and 346 IPC and Section 5(1) r/w 6 of Protection of Children from Sexual Offence Act, 2012 and Section 9 of Prohibition of Child Marriage Act, 2006. The respondent police filed final report and the same was taken on file in Spl.SC.No.34 of 2020 on the file of the Principal Special Court for Exclusive Trial or cases under POCSO Act, Salem. When the case was posted on 05.01.2021 the respondent police has examined PW1/defacto complainant, PW2/Victim girl and PW3/father of PW2, subsequently examined PW9 and



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PW11/Investigating Officer. Since the previous counsel engaged by the trial Court was not convenient to appear before the trial Court, he did not appear when the witnesses were examined. The counsel also did not give any instruction that those witnesses has to be cross examined by the petitioner, hence the petitioner has not cross examined them. Under such circumstances, the petitioner has engaged another counsel and filed an application under Section 311 Cr.P.C to recall PW1 to 3, 9 and 11 for cross examination in CrI.MP.No.148 of 2022. The lower Court by order dated 19.04.2022 dismissed the petition filed by the petitioner in CrI,MP.No.148 of 2022. Aggrieved by the same the petitioner has filed the present petition.

3. Heard both sides.

4. The trial Court after considering the fact held that summoning a child repeatedly to testify before the Court has been barred under Section 33(5) of POCSO Act and dismissed the petition stating that the victim child cannot be recalled. It is the contention of the learned counsel for the petitioner that the victim girl has not been cross examined by the



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petitioner and more over now she has attained majority and therefore requested to grant one opportunity to cross examine the victim girl.

Considering the serious offences framed against the accused and in order to give one more chance the dismissal order dated 19.04.2022 passed in Crl.M.P.No.148 of 2022 in Spl.SC.No.34 of 2020 to recall PW2 is set aside, subject to the payment of Rs.10,000/- (Rupees Ten Thousand Only) to the trial Court and the trial Court shall give the amount to the victim girl and fix a date for cross examination. Cross examination shall be done on the very same date, failing to cross examine on the very same date the accused will lose his right. The trial Court shall also take note of any contra evidence in the form of hostile and record the same and dispose of the matter considering the merits of the case.

5. With the above observation the Criminal Original Petition is allowed. Consequently connected miscellaneous petition is also closed.

17.06.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non speaking order
dpq



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To

- 1.The Inspector of Police,
All Women Police Station,
Town Police Station,
Salem District,
2. The Principal Special Court for
Exclusive Trial of Cases
under POCSO Act,
Salem.
3. The Public Prosecutor,
High Court, Madras.



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N. SATHISH KUMAR,J.

dpq

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