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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.14050 of 2022
and
Crl.M.P.No.7661 of 2022

Vignesh

...Petitioner/Accused

Versus

The State rep by
The Inspector of Police,
AWPS, Neyveli,
Cuddalore District.
(Crime No.16 of 2020)

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to call for the records pertaining to the order dated 06.05.2022 passed by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore in Crl.M.P.No.619 of 2022 in Spl.S.C.No.12 of 2021 and to set aside the same by allowing the Criminal Original Petition.

For Petitioner : Mr.R.Thirumoorthy

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

O R D E R

Aggrieved by the dismissal order passed by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore in Crl.M.P.No.619 of 2022 in Spl.S.C.No.12 of 2021 dated 06.05.2022, filed under Section 311 of Cr.P.C for recalling PW1 to PW10, the present petition has been filed.

2. The learned counsel for the petitioner would submit that he has not cross examined the witnesses PW1 and PW8 due to the continuous incarceration of the petitioner. Therefore, he has filed the application to recall all the witnesses before the Trial Court whereas, the learned Trial Judge had allowed the petition in respect of PW2 to PW7, PW9 & PW10 and had rejected the petition in respect of PW1 & PW8. Hence, he seeks to cross examine the witnesses PW1 & PW8.



3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

4. As a matter of fact that recall the witnesses cannot be ordered once the Sessions 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.

5. However, considering the fact that the petitioner was charged for serious offences under POCSO Act, this Court is of the view that one more final chance has to be given to cross examine the witnesses subject to the payment of cost of Rs.5,000/- payable to PW1 and PW8 equally before the learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore within a period of one week from the date of receipt of a copy of this Order. On such payment, the Trial Court shall fix specific date to summon PW1 and PW8 for cross examination. The cross examination 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 examining the witnesses. It is made clear that in the event of any evidence turns to be hostile in nature the Trial Court shall dispose of the case and decide the case on merits.

6. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

shk/nr

To

1.The Special Court for Exclusive Trial of Cases
under POCSO Act, Cuddalore

2.The Inspector of Police,
AWPS, Neyveli,
Cuddalore District.



3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Thirumoorthy, Advocate, S.R.No.37367

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Cr1.O.P. No.14050 of 2022
and
Cr1.M.P.No.7661 of 2022

NR(CO)
SB(05/07/2022)