

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.14668 OF 2022

Nazir Basha

...Petitioner

Versus

State Represented by
The Inspector of Police
All Women Police Station
Villupuram District
(Crime No. 31/2017)

...Respondent

Prayer : This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the petition in Crl.M.P.No.2282 of 2021 in Special SC.No.07/2020 dated 21.02.2022 on the file of the Special Court for exclusive trial of cases under POCSO Act, Villupuram to set aside the same by allowing the original petition.

For Petitioner : Mr.B.Abdul Samath

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the Special Court for exclusive trial of cases under POCSO Act, Villupuram in Crl.M.P.No.2282 of 2021 dated 21.02.2022 under Section 311 Cr.P.C. dismissing the petition under Section 311 Cr.P.C. to recall the victim who was aged about 8 years.

2. The contention of the learned counsel for the petitioner is that the victim was not cross examined due to certain inconvenience of defence counsel. Therefore, one more chance has to be given. Hence, this Criminal Original Petition.

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

4. At the outset, I do not find any infirmity in the order passed by the Trial Court. The petitioner had been protracting the case for more than 4 years for cross examining the witnesses. That itself indicates that it is done purposefully only in order to make the victim to resile her from the statement. Admittedly, victim has given her statement against the accused and other witnesses appears to be turned hostile. It is to be noted that Section 33(5) of the Protection of Children from Sexual Offences Act, 2021 stipulates that the Special Court shall ensure that the child is not called repeatedly to testify in the Court and similarly under 33(6), aggressive questioning to the Child are also prohibited.

5. When the conduct of the petitioner itself is to deviate the very object of the Act, such conduct cannot be entertained by the Court of Law. Every occasion trial should be conducted on day to day basis when the witness are present and the cross examination cannot be conducted at the whims and fancies of the Counsel or the accused. It is the duty of the counsel who appear for the accused to cross examine the witness. Similarly, inconvenience of the defence counsel cannot be a good ground to recall the victim and at the time of witness, now the victim is still a minor.

6. Considering the mandate of law, this Court is of the view that the order of the Trial Court does not require any interference. Accordingly, this criminal original petition stands dismissed. However, this Court directs the Trial Court to expedite the Trial and dispose of the case on merits and in accordance with law.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

dhk

To

1.The Special Court for exclusive trial of
cases under POCSO Act, Villupuram.

2.The Inspector of Police
All Women Police Station
Villupuram District

3.The Public Prosecutor,
Madras High Court, Chennai

Cr1.O.P.No.14668 of 2022

NK(CO)
RVM(12/07/2022)