

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.14571 of 2022

and

Crl.M.P.No.8044 of 2022

K.Padmanaban

... Petitioner

Vs.

State by Inspector of Police

Ammapettai Police Station

Salem District

Crime No.444 of 2013

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 02.06.2022 passed in Crl.M.P.No.188 of 2020 in Old SSC No.49 of 2015 and New SSC No.10 of 2019 on the file of Special Judge for POCSO Act, Salem.

For Petitioner : Mr.V.Karthick, Senior Counsel for
Mr.R.Nalliyappan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 02.06.2022 passed in Crl.M.P.No.188 of 2020 in Old SSC No.49 of 2015 and New SSC No.10 of 2019 on the file of Special Judge for POCSO Act, Salem.

2. This application has been filed challenging the order of the learned Special Judge for POCSO Act, Salem, dismissing the application filed for recalling P.W.9 on the ground that the petition seems to have been filed only to delay the proceedings since it was the third application for recalling P.W.9. Further, after the dismissal of the 2nd application, the petitioner had approached the High Court and the same was dismissed. Against which, he also approached the Hon'ble Apex Court by filing a special leave petition which was also dismissed by the Hon'ble Apex Court.

3. Mr.V.Karthick, Senior Counsel appearing for the petitioner would submit that the trial Court has not considered the ambit of Section 33(5) of POCSO Act. Section 33(5) of POCSO Act deals with only minors whereas in this case, the witness/P.W.9 has attained majority and she is now aged 22 years. Therefore, his contention is that merely because the earlier applications were dismissed by the Court, the same cannot be a ground to reject the application and the valuable right of the accused should not be defeated.

4. Perused the entire orders. It is relevant to note the grounds on which the recall of witness is sought that the petitioner could not give instructions to the defence counsel to make cross examination of P.W.9 on 17.08.2019 and therefore, the cross examination could not be done on that day. It is relevant to note that P.W.9 is the child witness when she was examined. However, she has not been cross examined despite the counsel appeared for the petitioner. On earlier occasion, a similar application was filed before this Court in CrI.O.P.No.17758 of 2021 seeking for cross examining the same witness/P.W.9. The ground alleged in that petition is that the counsel was not available and hence, he could not cross examine the witness on the same day. This Court dismissed the said application by order dated 14.10.2021 which was also challenged before the Hon'ble Apex Court in SLP (CrI) No.9275 of 2021 and Hon'ble Apex Court by order dated 13.12.2021 dismissed the same and did not interfere with the order of this Court. The petition for cross examination of P.W.9 was already dismissed and reached finality. The petitioner has once again sought for cross examination of the same witness on different ground that the petitioner could not give instructions to the counsel which is totally false. On previous occasion it was stated as if the counsel was not available on that day and therefore, the witness could not be cross examined, whereas in the present petition, a new reason is assigned as if the petitioner himself could not give proper instructions to the counsel. Such ground itself is unacceptable. Be that as it may. The very object of the POCSO Act is to cross examine the witness on day to day basis and the child should not be called repeatedly. Admittedly, this application for cross examination of P.W.9 reached finality. Therefore, merely because the child has now attained majority and aged 22 years, the same is not a ground to cross examine P.W.9. Though the rigour of Section 33(5) of the POCSO Act applies strictly to the child witness, this Court does not deal with the scope of Section 33 (5) of POCSO Act rather it deal with the conduct of the parties. In the year 2021 itself, P.W.9 was a major. Even at that stage, this Court did not accept the contention of the petitioner and dismissed the application which is also approved by the Hon'ble Apex Court. In such view of the matter, again on different ground if the cross examination of P.W.9 is allowed, it would

amount to overturning the Judgment of the Hon'ble Apex Court.
Hence, this Court does not find any merit in this case.

5. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Special Court for POCSO Act, Salem.
2. Inspector of Police
Ammapettai Police Station
Salem District
3. The Public Prosecutor
High Court, Madras

+1cc to Mr.R.Nalliyappan, Advocate SR.No.39607

Cr1.O.P.No.14571 of 2022
and
Cr1.M.P.No.8044 of 2022

SMI(CO)
GMY(18/07/2022)