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CrI.O.P.No.20855 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.20855 of 2022

and

CrI.M.P.No.13630 of 2022

P. Kumar

...

Petitioner

Vs

The State,
Rep. by the Inspector of Police,
D-3, Podanur Police Station,
Coimbatore District.

...

Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order passed by the Special Court for POCSO Act Cases, Coimbatore in C.M.P.No.737 of 2022 in Spl.S.C.No.50 of 2019 dated 11.07.2022.

For Petitioner : Mr.S.B.Viswanathan

For Respondent : Mr.S.Santhosh
Government Advocate (CrI. Side)



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ORDER

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This Criminal Original Petition has been filed to set aside the order dated 11.07.2022 in C.M.P.No.737 of 2022 in Spl.S.C.No.50 of 2019 passed by the Special Court for POCSO Act Cases, Coimbatore, thereby dismissing the petition filed under Section 311 of Cr.P.C to recall P.W.5.

2. Heard, Mr.S.B.Viswanathan, learned counsel appearing for the petitioner and Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the respondent.

3. It is seen that the petitioner is an accused who is facing charges for the offences punishable under Sections 5(1) and 6 of the Protection of Children from Sexual Offences Act and Section 506(2) of IPC. The prosecution so far examined P.Ws.1 to 11. However, the petitioner failed to cross-examine P.W.5, due to Covid-19 pandemic situation. The Court below dismissed the petition filed by the petitioner on the ground that P.W.5 is the sister of P.W.2 and she was examined in chief on 04.02.2020 itself. However, the accused person was not cross examined and now he has filed



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a petition to recall P.W.5 on the ground that change of counsel.

Admittedly, P.W.5 was not cross-examined by the petitioner.

4. Considering the above facts and circumstances of the case, this Court is of the opinion that the petitioner may be given an one more opportunity to cross-examine since the prosecution is yet to examine seven more witnesses.

5. In view of the above, the order dated 11.07.2022 in C.M.P.No.737 of 2022 in Spl.S.C.No.50 of 2019, passed by the Special Court for POCSO Act Cases, Coimbatore, is hereby set aside. Accordingly, this Criminal Original Petition is allowed on payment of necessary cost. It is made clear that, if the petitioner failed to cross-examine P.W.5 on the date to be fixed by the Trial Court, the Trial Court is directed to proceed with the trial in accordance with law. Consequently, connected miscellaneous petition is closed.

05.09.2022

Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

Lpp

To

1. The Special Court for POCSO Act Cases,
Coimbatore

2. The Inspector of Police,
D-3, Podanur Police Station,
Coimbatore District.

3. The Public Prosecutor,
High Court, Madras.

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and

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