

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.23243 OF 2021

P.Manikandan

... Petitioner

Vs.

The State Rep. by its  
The Inspector of Police,  
Mohanur Police Station,  
Mohanur  
Namakkal District.  
(Cr.No.441 of 2016)

... Respondent/Complainant

PRAYER: Criminal Original Petition had been filed under Section 482 of Cr.P.C, praying to set aside the order made in Cr1.M.P.No.1615 of 2021 in Special C.C.No.15 of 2018, dated 09.11.2021 on the file of the learned Sessions Judge (Fast Track Mahila Court), Namakkal.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mr.L.Baskaran  
Government Advocate (Cr1.Side)

ORDER

This Petition is filed by the Accused seeking to set aside the order of the learned Sessions Judge Fast Track Mahila Court, Namakkal, for dismissing the Petition filed under Section 311 Cr.P.C. by the Petitioner herein in Cr1.M.P.No.1615 of 2021 in C.C.No.15 of 2018.

2. It is the contention of the Petitioner before the Trial Court that the P.W.2 and P.W.3 who happened to be the parents of the Victim/P.W.1. P.W.2 + P.W.3 were already cross-examined before the Trial Court on the same day P.W.2 + P.W.3 were examined by the Prosecution. Subsequently, the Petitioner herein

had filed Crl.M.P.No.1615 of 2021 seeking to recall P.W.2 + P.W.3 for further cross-examination on the ground that vital point was not put in cross-examination.

3. The Prosecution had vehemently objected to the same and filed Counter. After hearing the arguments of the learned Counsel for the Defence and the Prosecution, the learned Sessions Judge Fast Track Mahila Court, Namakkal, had dismissed the Petition stating that the reasons were vague. Further it is pointed out by the Learned Sessions Judge, Fast Track Mahila Court, Namakkal, that the Case in C.C.No.15 had been pending from the year 2018 and it is nothing but a method adopted to drag on the proceedings. Therefore, the Petition was dismissed as not maintainable.

4. The learned Government Advocate submit that the Case had proceeded to the stage of examination of Investigation Officer. The learned Government Advocate (Crl.Side) also invited the attention of this Court under Section 35(2) of the Protection of the Children from Sexual Offences Act 2012 where in it is stated that from the date of taking cognizance of the offences by the learned Sessions Judge the Trial had to be concluded within a reasonable period of one year. Under those circumstances, the Petition had been filed in the year 2021 seeking to recall the witnesses who were already examined in the year 2019, when the Case was taken cognizance by the learned Sessions Judge in 2018 itself. As rightly pointed out by the learned Government Advocate (Crl.Side), that this is nothing but an exercise with ulterior motive to protract the proceedings.

5. It is to be noted that the Hon'ble Supreme Court had deprecated the practice of learned Counsels appearing for the Accused before the Trial Courts in Criminal Cases that at their Whims and Fancies, the witnesses are recalled, misusing the provision of Section 311 Cr.P.C. Of late, the Judgement of the "Vinod Kumar Vs. State of Punjab" where the Trial Courts were directed to insist the learned Counsels appearing for the Accused to cross examine the Witnesses then and there. Only in rare instances the powers to recall the Witnesses shall be exercised sparingly.

6. If adopting the said guidelines issued by the Hon'ble Supreme Court, the order passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, dismissing this Petition is found acceptable and reasonable, particularly in the circumstances that the witnesses were the parents of the Victim. They were already cross-examined when they had appeared before the Court on behalf of the Prosecution. As an after thought, without giving details with vague reasons, "some vital

aspects" , is found to be vague. The learned Sessions Judge had dismissed the Petition. There is no ground to interfere with the said order. Therefore, there is no valuable ground especially for exercising the extraordinary power under Section 482 of Cr.P.C.

7. Accordingly, this Petition is dismissed as not maintainable. The learned Sessions Judge is directed to proceed with the Case and dispose of the Case within a reasonable period of two months from the date of receipt of the copy of this order.

Sd/-  
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,  
Fast Track Mahila Court,  
Namakkal.
2. The Inspector of Police,  
Mohanur Police Station,  
Mohanur  
Namakkal District.
3. The Public Prosecutor  
High Court, Madras.

Cr1.O.P.No.23243 of 2021

SKM(CO)  
RLP(13/07/2022)