



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.24390 of 2021

Karthi

... Petitioner

Versus

State represented by
Inspector of Police
Mettupalayam Police Station
Coimbatore
Crime No.438 of 2021

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.M.P.No.629 of 2021 in Spl.S.C.No.38 of 2019 dated 27.09.2021 passed by the Special Sessions Court (POCSO Act) at Coimbatore and subsequently direct the Special Session Court (POCSO Act) to recall the witness PW2-Meharaj Nisha for further cross in Spl.S.C.No.38 of 2019 pending on the file of the Special Sessions Court pass (POCSO Act).

For Petitioner : Mr.I.Periyasamy

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order in Crl.M.P.No.629 of 2021 in Spl.S.C.No.38 of 2019 dated 27.09.2021 passed by the Special Sessions Court (POCSO Act) at Coimbatore and subsequently direct the Special Session Court (POCSO Act) to recall the witness PW2-Meharaj Nisha for further cross.

2. The case of the prosecution is that the petitioner filed a petition under Section 311 of Cr.P.C., to recall PW2 for cross examination in CMP.No.629 of 2021 in



Spl.C.C.No.38 of 2019 and the same was dismissed by the trial Court citing as per Section 33(5) of the POCSO Act "the Special Court shall ensure that the child is not called repeatedly to testify in the Court." and further PW2/victim was examined in chief on 17.07.2019, but no steps were taken to recall her for the past two years.

3. The learned counsel for the petitioner submitted that PW2 is now married and leads a happy life and she is now willing for a compromise.

4. The learned Additional Public Prosecutor submits that the victim girl/PW2, lost her parents at her early age and she was brought up by her aunt. At that time, the petitioner said to have committed the offence. In this case, the trial commenced on 17.07.2019 and the prosecution side evidence was closed on 26.08.2019. The accused was examined under Section 313 of Cr.P.C on 28.08.2019. Thereafter, the case was posted for defence evidence on 04.09.2019. At that time, the present application was filed.

5. He further submits that the victim girl/PW2 has now married one Ravi and she is living happily, and if she is now called in the witness box, it would amount only to harassment. He further submits that the case is posted for arguments on 27.01.2022 and considering the stage of case, this petition cannot be entertained.

6. In view of the above, it is seen that when PW2 was examined, the accused did not take any steps to cross examine her and he has also not given any reason for the same. Further, as per Section 33(5) of the POCSO Act, "the Special Court shall ensure that the child is not called repeatedly to testify in the Court." Hence, this Court is not inclined to entertain this petition.

7. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar



1.The Special Sessions Judge,
(POCSO) Act, Coimbatore.

2.The Inspector of Police
Mettupalayam Police Station
Coimbatore
Crime No.438 of 2021.

3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.24390 of 2021

PMK (CO)
CB(31/01/2022)