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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.25771 OF 2021

AND

CRL.M.P.NO.14304 OF 2021

D.Arunkumaryadav

... Petitioner/Accused

.Vs.

The State Rep. by,
The Inspector of Police,
North All Women Police Station,
Tirupur.
(Crime No.9/2020)

... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 09.12.2021 made in C.M.P.No.390 of 2021 in SPL.S.C.No.67/2020 on the file of the Sessions Judge, Mahila Court (FAC), Tirupur.

For Petitioner : Mr.Deepan Uday

For Respondent : Mr.R.Vinoth Raja
Government Advocate (Crl. side)

ORDER

The petitioner/accused, who is facing trial in SPL.S.C.No.67/2020, for the offence under Sections 5(1), 5(n) r/w 6 of POCSO Act, has filed a petition in C.M.P.No.390 of 2021 in SPL.S.C.No.67/2020, under Section 311 Cr.P.C. to recall and cross examine PW1. The trial Court dismissed the same, by an order dated 09.12.2021, against which the present petition has been filed.

2. The contention of the petitioner is that the victim girl PW1 was examined on 20.11.2021 and on the same day, she was cross examined by the petitioner's counsel. During cross



examination, some of the important questions with regard to the vital aspects had been left over, which came to the knowledge of the present counsel. The earlier counsel had failed to cross examine these aspects. He further submitted that there are totally 14 witnesses in this case, so far, PW1 had been examined and no delay will be caused and the petitioner is ready to pay any cost and abide by any condition that is imposed by this Court.

3. The learned Government Advocate (Crl.side) submits that the victim is a minor girl hailing from Assam. She had believed the petitioner's family and came to stay in Tiruppur and working in Tiruppur. The minor victim girl had been sexually assaulted on several occasions. Later, complaint was lodged and now, the petitioner is facing the above case and the petitioner had cross examined the victim girl in detail in the lower court. He further submitted that considering all these aspects and also the provisions under Section 33 (5) of the POCSO Act, the lower Court dismissed C.M.P.No.390 of 2021 in Spl.S.C.No.67/2020, by an order dated 09.12.2021 that the victim girl cannot be harassed unnecessarily.

4. On a perusal of the materials and the victim girl being cross examined in detail, change of Advocate will not give the right for the accused to file a petition under Section 311 Cr.P.C., moreso, when there is a prohibition to recall the minor victim for cross examination under Section 33(5) of the POCSO Act. Further, the petitioner had not given any valid reason for recalling PW1. In view of the same, this Court finds no reason to interfere with the order of the lower Court. Accordingly, this criminal original petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Sessions Judge,
Mahila Court (FAC),
Tirupur.



2. The Inspector of Police,
North All Women Police Station,
Tirupur.
(Crime No.9/2020)

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3. The Public Prosecutor,
High Court, Madras.

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GPL (CO)
PBS/31/01/2022