



Crl.O.P.No.28271 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.28271 of 2022

Balamurugan

...Petitioner

Vs.

State through
The Inspector of Police,
All Women Police station,
Rasipuram, Namakkal.
(Crime No.03/2018)

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order, dated 27.08.2022 made in Crl.M.P.No.978 of 2022 in Spl.C.C.No.36 of 2018, on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.S.Santhosh,
Government Advocate (Crl. side)

ORDER

This Criminal Original Petition is filed to set aside the order, dated 27.08.2022 made in Crl.M.P.No.978 of 2022 in Spl.C.C.No.36 of 2018, on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.



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2. The petitioner is the sole accused in Special C.C No.36 of 2018 for the offences under Section 366 of IPC and section 5 (1) /w 6 of POCSO Act, 2012 and Section 9 of the Child Marriage Restraint Act, 1929. During the pendency of trial, the petitioner has filed a petition in Crl.M.P.No.978 of 2022 under section 311 of Cr.P.C., to recall PW1 for further cross examination and the same was dismissed. Aggrieved over the same, the petitioner has preferred the present Criminal Original Petition.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the petitioner submitted that PW1 was cross examined on 17.10.2019 and thereafter the petitioner had collected certain information and hence it necessitated the petitioner to recall PW1 for further cross examination and that was not considered favourably.

5. The learned Government Advocate (Crl. Side) submitted that under Section 33(5) of the POCSO Act, the victim who is the child shall not be



called repeatedly to testify in the Court; further the petitioner had granted an opportunity to cross examine the witness; however, in the guise of recalling PW1, he is attempting to harass the witness.

6. The records would show that the victim was examined as PW1 as early as on 28.08.2019. As per the mandate, she was not cross examined on the same day. However, she was cross examined on 17.10.2019. Not being satisfied with the said cross examination, the petitioner has come out with the petition to recall the petitioner for further cross examination. As rightly pointed out by the learned Government Advocate and also observed by the learned Sessions Judge, as per Section 33 (5) of the POCSO Act, the child survivor of sexual offence who is the witness shall not be called to the Court repeatedly to testify the Court.

7. The learned counsel for the petitioner submitted that at the time of alleged occurrence, PW1 was 17 years and now she attained majority and hence there cannot be any problem for recalling her again.



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8. No doubt, at the time when the occurrence is said to have been committed, PW1 was a minor and she is a child within the definition of section 2 (d) of the POCSO Act. The petitioner had already given an opportunity to cross examine PW1. In such circumstance, the Sessions Court has refused to recall PW1 once again in view of the mandatory provisions under Section 33 (5) of the POCSO Act. I do not find any infirmity in the order of the learned Sessions Judge and the same does not require any interference by this Court.

9. In the result, this Criminal Original Petition is dismissed.

18.11.2022

vum

Index:yes/No

Speaking order / Non speaking order

To

1. The Inspector of Police,
All Women Police station,
Rasipuram, Namakkal.

2. The Public Prosecutor,
Madras High Court,
Chennai.

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R.N.MANJULA,J.

vum

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