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Crl.O.P No.28676 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.28676 of 2022
and Crl.M.P. No.17569 of 2022

1.Gunasekaran
2. Kalaivani

... Petitioners

Vs.

The State rep. through
The Inspector of Police Station,
Namakkal District.
Cr. No.1146/2016

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 08.06.2022 in Crl.M.P. No.408/2022 in Special C.C. No.08 of 2018 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal and permit the petitioners to recall the P.W.2.

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



ORDER

This Criminal Original Petition has been filed to set aside the order dated 08.06.2022 in Crl.M.P. No.408/2022 in Special C.C. No.08 of 2018 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal and permit the petitioners to recall the P.W.2.

2. The petitioners are the first and second accused against whom charges have been made for the offences under Section 366 (A) IPC @ 363, 366 IPC and Section 3 & 4 of POCSO Act. At the time of trial, the victim was examined as P.W.2 and on the same day itself she was cross examined partly. Since the rest of the cross examination has to be done, in the interest of justice, she has to be recalled. A petition filed in this regard was dismissed on 08.06.2022. Aggrieved over that the present Criminal Original Petition has been filed.

3. The learned counsel for the petitioner submitted that it is a case of love affair between the third accused and the victim; the first and second accused are uncle and aunt of the third accused; certain vital facts have been omitted by P.W.2 during her cross examination; the learned Sessions Judge



had chosen to dismiss the petition by stating that the victim shall not be repeatedly called before the Court to depose evidence.

4. When the petitioners have examined P.W.2 on the day when she came to chief examination, cross-examination ought to have been done completely on the same day. The learned counsel for the petitioner stated that victim is 17 years old on the date of occurrence and there is love affair between herself and the third accused.

5. Considering the facts and circumstance of the case, I feel it is appropriate to give one opportunity to the petitioners to cross-examine P.W.2 on the following conditions:

- i. the petitioners are directed to jointly pay a sum of Rs.2,000/- (Rupees One thousand only) to P.W.2 and deposit the same in advance in the Court;
- ii. on receipt of payment of the said amount, the learned trial Judge shall summon the witnesses by fixing a date;
- iii. the petitioners shall cross examine the witness P.W.2 on the same day without making them to wait for long in the Court corridors;



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iv. failure on the part of the petitioners to comply the above conditions, will deprive them from getting the benefit of this order.

v. When PW2 is present for cross examination, the learned trial Judge shall disburse the said cost to them directly.

6. With the above direction, this Criminal Original Petition is disposed. Consequently, connected miscellaneous petition is closed.

23.11.2022

Index : Yes/No
Speaking Order : Yes / No

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To:

1. The Inspector of Police Station,
Namakkal District.

2. The Sessions (Fast Track Mahila) Judge,
Namakkal.

3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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