



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.4676 of 2022

and

Crl.M.P(MD)No.3302 of 2022

Thiraviyem

... Petitioner/Sole Accused

Vs.

The Inspector of Police,
Thallakulam All Women Police Station,
Madurai District.

(Crime No.41 of 2018)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed in Cr.M.P.No.1272 of 2021 in Spl.S.C.No.130 of 2018, dated 15.12.2021 on the file of the Special Court for POCSO Act cases, Madurai and to recall the witnesses PW.1 and PW.2 for cross examination.

For Petitioner : Mr.S.Sureshkumar Isaac Paul

For Respondent : Mr.R.M.Anbunithi

Additional Public Prosecutor (Criminal Side)

ORDER

This Criminal Original Petition has been filed seeking a direction to set aside the order passed in Cr.M.P.No.1272 of 2021 in Spl.S.C.No.130 of 2018, dated 15.12.2021 on the file of the Special Court for POCSO Act Cases, Madurai and to recall the witnesses - PW.1 and PW.2 for cross examination.

2. A perusal of the records reveals that the petitioner is an accused under Sections 9(m), 10, 11(1) and 12 of Protection of Children from Sexual Offences Act, 2012. After framing of charges as against the petitioner, the trial Court fixed the trial on 07.11.2020. However, due to Covid-19 Pandemic circumstances, the trial has not been commenced and the case is adjourned to 08.02.2021. P.W.1 and P.W.2 were examined. On that day, the petitioner could not be able to cross-examine P.W.1 and P.W.2 and from next hearing, he filed the petition for under Section 311 Cr.P.C to recall P.W.1 and P.W.2 for cross-examination. The respondent raised the objection under Section 33(5) of the



Protection of Children from Sexual Offences Act, 2012, that the Special Court shall ensure that the child is not called repeatedly to testify in the Court and also as per the judgment laid down in the case of **Vinoth Kumar Vs. State of Punjab 2015(3) Crimes 269 S.C.**

3. The only point for consideration is that due to Covid-19 pandemic circumstances, the petitioner aged about 72 years could not be able to cross-examine P.W.1 and P.W.2 on the same day. Therefore, he may be given one more opportunity for cross-examination.

4. In view of the above, the order passed in Cr.M.P.No.1272 of 2021 in Spl.S.C.No.130 of 2018, dated 15.12.2021 on the file of the Special Court for POCSO Act Cases, Madurai, is set aside and the trial Court is directed to fix a particular date for cross-examining P.W.1 and P.W.2 on payment of necessary costs and if the petitioner fails to cross-examine P.W.1 and P.W.2 on the day fixed by the trial Court, the trial Court is directed to proceed with the trial on merits and in accordance with law.

5. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sessions Judge,
The Special Court for POCSO Act Cases,
Madurai.

2.The Inspector of Police,
Thallakulam All Women Police Station,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SURESH KUMAR ISAAC PAUL, Advocate (SR-11945[F]
dated 14/03/2022)

CrI.O.P(MD)No.4676 of 2022
and
CrI.M.P(MD)No.3302 of 2022
11.03.2022

ss (CO)
GC (24.03.2022) 3P 5C