



Crl.O.P(MD)No.13637 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P(MD)No.13637 of 2022

Vijayakumar

... Petitioner/Accused No.1

Vs.

**State Rep.by
The Inspector of Police,
All Women Police Station,
Thirupparankundram.
(Crime No.5 of 2019)**

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crl.M.P.No.663 of 2022 in Spl.S.C.No.77 of 2019 and set aside the order, dated 07.07.2022 passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.

**For Petitioner : Mr.S.Muthumalai Raja
For Respondent : Mr.R.Sureshkumar
Government Advocate (Crl.side)**

ORDER

This Criminal Original Petition has been filed to set aside the order in Crl.M.P.No.663 of 2022 in Spl.S.C.No.77 of 2019 and set aside the order, dated 07.07.2022 passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is an accused No.1 in Spl.S.C.No.77 of 2019 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai. The petitioner/A1 along with other accused have prosecuted for the offence under Sections 7 and 8 of POCSO Act. So far, twelve witnesses have been examined. The victim girl/PW1 was examined in chief on 11.03.2021. But, she was not cross-examined by the petitioner/A1. Hence, the petitioner has filed a petition in Crl.M.P.No.663 of 2022 in Spl.S.C.No.77 of 2019, recall the victim girl/P.W.1 for the purpose of cross examination, which was dismissed by the trial Court on the ground that there is no specific reason assigned for recalling the victim girl. Now the petitioner prays this Court to give one more opportunity to cross-examine the victim girl/PW1 and allow this petition.

3. The learned Government Advocate (Crl.side) appearing for the respondent police submitted that the victim girl/PW1 was examined in chief on 11.03.2021. The reasons stated by the learned Counsel appearing for the petitioner is not an acceptable one and further stated that in view of the Section 35(1) of the POCSO Act, the evidence of the child shall be recorded within a period of thirty days. Therefore, the trial Court rightly dismissed the petition and pleaded to dismiss this petition.



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4.I have considered the submissions made by both the parties.

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5.A perusal of records reveals the fact that the petitioner is an accused No.1 in Spl.S.C.No.77 of 2019 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai. The petitioner/A1 along with other accused have prosecuted for the offence under Sections 7 and 8 of POCSO Act. So far, twelve witnesses have been examined. The victim girl/PW1 was examined in chief on 11.03.2021. But, she was not cross-examined by the petitioner/A1. The petitioner has filed a petition to recall PW1 for the purpose of cross examination before the trial Court and stated that PW1 was not cross examined on the side of the petitioner and seek unconditional apology and ready to obey any conditions to recall the witness. But he has not stated any sufficient reasons to recall the said witness. In order to meet the prosecution case effectively, a fair chance has to be given to the accused/ A1 to place his defense.

7.Therefore, I am inclined to give an opportunity to the petitioner to place his defense, by way of cross-examining the victim girl/P.W.1.

8.Accordingly, the impugned order, dated 07.07.2022 in Cr.M.P.No.663 of 2022 in Spl.S.C.No.77 of 2019 passed by the learned Sessions Judge,



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Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai is hereby set aside, on condition that the victim girl/P.W.1 has to be cross examined on the same day, without seeking adjournment and the petitioner has to pay day cost for the victim girl/P.W.1 to come back to the Court for giving evidence. The learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, is hereby directed to recall the victim girl/P.W.1 in Special S.C.No.77 of 2019, to enable the petitioner to cross examine the victim girl/P.W.1 on the same day and further collect the day cost for the victim girl/P.W.1, from the petitioner and pay to the victim girl/P.W.1.

9.Accordingly, this Criminal Original Petition is allowed.

28.07.2022

Index : Yes / No
Internet : Yes/ No
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To

- 1.The Sessions Judge,
Principal Special Court for Exclusive Trial of Cases
under POCSO Act, Madurai.
- 2.The Inspector of Police,
All Women Police Station,
Thirupparankundram.
- 3.Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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