



CrI.O.P.(MD) No.21057 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P (MD) No.21057 of 2022

and

CrI.M.P.(MD) No.14746 of 2022

Selvaraj @ Vickraman

...Petitioner

vs

**The Inspector of Police,
All Women Police Station,
Marthandam,
Kanniyakumari District.**

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari District at Nagercoil in CrI.M.P.No.260 of 2022 in Special Session Case No.31 of 2021 dated 11.08.2022.

For Petitioner : Mr.K.P.Narayanakumar

**For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor**



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ORDER

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This Criminal Original Petition had been filed to set aside the order passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari District at Nagercoil in Crl.M.P.No.260 of 2022 in Special Session Case No.31 of 2021 dated 11.08.2022.

2.It is the submission of the learned Counsel for the Petitioner that as per the prosecution case, PW1 is the victim. P.W2 is the mother of the victim. P.W4 is the close relative. Since the prosecution had not produced the witnesses on the same day, the Petitioner could not proceed with the cross-examination on the same day. Therefore, he sought to recall the witnesses, P.W1, P.W2 and P.W4, for cross-examination on the same day.

3.The Petitioner had filed Crl.M.P.No.260 of 2022 under Section 311 Cr.P.C. seeking to recall P.W1, P.W2 and P.W4 for cross-examination before the learned Sessions Judge, Special Court under POCSO Act, Kanniyakumari District and the Trial Court, vide order dated 11.08.2022, had dismissed the said petition as follows:-



“8.In this case, the victim P.W1 examined in chief on 09.12.2021 and her mother examined as P.W2 on the very same date. P.W3 to P.W5 examined on 27.12.2021. But P.W1, P.W2 and P.W4 were not cross-examined on the very same date, even though the counsel for the accused was present at the time of examining the witnesses. Now, the learned counsel has taken a stand as P.W1, P.W2 and P.W4 are eye witnesses and if they are cross-examined on different dates, they would interact among themselves and it would cause prejudice to the accused. The reason stated by the learned counsel for the defence is not acceptable, since P.W1 victim and her mother P.W2 are vital witnesses as far as this case is concerned and no valid reason stated by the defence side with regard to non cross examination of the witnesses on the very same date. Moreover, the victim cannot be repeatedly called before this Court to adduce evidence. If she is repeatedly called before this Court, it may create mental agony to the victim. The reason stated by the petitioner side for recalling the evidence is not acceptable and it is not a valid one. The witnesses ought to have been cross-examined then and there and this petition to recall P.W1, P.W2 and P.W4 filed after three months of examining the witnesses. Hence, the reason stated for recalling the witnesses are not acceptable and this petition is devoid of merits and it is liable to be dismissed.

In the result, this petition is dismissed. ”



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4.The learned Additional Public Prosecutor for the Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the order passed by the learned Sessions Judge is well reasoned order and it does not warrant interference from this Court. As per the provisions of the POCSO Act cases and as per the rules governing in Sessions Cases, when the witnesses are before the Court, they shall be cross-examined on the same day. Here, the Petitioner as accused had not exercised the right of cross-examination. Therefore, it does not warrant any interference from this Court. Therefore, the learned Additional Public Prosecutor seeks to dismiss this petition as having no merit.

5.On consideration of the rival submissions, it is found that what had been stated by the Petitioner is found justified. In criminal cases, particularly in warrant cases and sessions cases, the witnesses are to be produced as per the proceedings of the trial Judge. Independent witnesses are examined on the same day and the Official witnesses are also to be examined on the later part of the stage nearing completion of the trial.



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6. Here in this case, it is found that P.W1 and P.W2 were examined on 09.12.2021 and P.W3 to P.W5 were examined 27.12.2021. That gives presumption that the learned Judge had not followed the procedures regarding sessions trial. Usually, sessions trials are given top priority because of the grave charges and grave punishment. Therefore, the independent witnesses are examined on day one to three. The Official witnesses are also examined on the last day or the day prior to the last date.

7. Here in this case, as per the final report of the Investigation Officer, there are 16 witnesses including the Investigation Officer. P.W1 is the victim. P.W2 is the mother of the victim. P.W3 to P.W6 are the corroborating witnesses, independent witnesses. P.W7 and P.W8 are the Observation Mahazar witnesses. P.W9 and P.W10 are the formal witnesses. P.W11 and P.W12 are the Expert witnesses. P.W13 is also the formal witness. P.W14 is the Duty Officer. P.W15 is an Expert witness. P.W16 is the Investigation Officer. Therefore, the list witnesses 11, 12, 14 to 16 are the Official witnesses. There will not be much delay for cross-examination of the Official witnesses. Therefore, the Official Witnesses could have been examined on the same day. P.W1 to P.W6 could have been examined on the



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same day and P.W7 to P.W16 could have also been examined on a subsequent day. Instead, the learned Sessions Judge had adopted the method unknown to the sessions trial examining the complainant and the victim on day one and reelecting the other independent witnesses on long adjournment. That shows that the witnesses had not been examined on day-to-day basis. Part of the mistake is on the learned Sessions Judge. The learned Sessions Judge had not followed the due procedure in giving top priority to a grave charge, which attracts grave punishment and resulted in the accused seeking recall of the witnesses on a subsequent day or the same day.

8.It ought to have been examined on the same day. Examination of the independent witnesses if had been on the same day, as rightly pointed out by the learned Additional Public Prosecutor attached to the Special Court for POCSO Cases, the witnesses could have been examined on the subsequent day. Therefore, for the mistake and lapses on the part of the learned Sessions Judge, Special Court under POCSO Act, Kanniyakumari District, the Petitioner had an opportunity to seek relief from this Court. The apprehension expressed by the Petitioner from the angle of the cross-



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examination of the witness for valuable defense is found justified.

Therefore, the order passed by the learned Sessions Judge Special Court under POCSO Act, Kanniyakumari District in Crl.M.P.No.260 of 2022 dated 11.08.2022 is set aside.

9.The learned Sessions Judge Special Court under POCSO Act, Kanniyakumari District is directed to issue summons to the witnesses P.W1 to P.W4 on the same day within a week from the date of receipt of a copy of this order to enable cross-examination on the same day with imposing reasonable costs on the Petitioner for the conveyance and other expenses, which is left to the discretion of the learned Sessions Judge, Special Court under POCSO Act, Kanniyakumari District.

10.In the result, this Criminal Original Petition is allowed.
Consequently, connected Miscellaneous Petition is closed.

Internet:Yes/No

29.11.2022

Index:Yes/No

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Note : Issue order copy on 30.11.2022



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SATHI KUMAR SUKUMARA KURUP, J.

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To

- 1.The Sessions Judge,
Special Court under POCSO Act,
Kanniyakumari District.
- 2.The Inspector of Police,
All Women Police Station,
Marthandam,
Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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