



Crl.OP.No.533 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.533 of 2023

L.Subramaniam

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Coimbatore East,
Coimbatore.
Crime No.12 of 2021

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for records relating to the Impugned Order dated 23.12.2022 passed in Crl.M.P.No.1363 of 2022 in Spl.C.C.No.90 of 2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore to set-aside the same.

For Petitioner

: M/s. K.Govi Ganesan

For Respondents

: Mr.S.Santhosh
Government Advocate (Crl. Side)



Crl.OP.No.533 of 2023

ORDER

This Criminal Original Petition has been filed to call for records relating to the Impugned Order dated 23.12.2022 passed in Crl.M.P.No.1363 of 2022 in Spl.C.C.No.90 of 2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore to set-aside the same.

2.The learned counsel for the petitioner submitted that *PWI (victim girl)* was not present on 13.05.2022, 04.07.2022 and on 01.08.2022 for recording evidence. *PWI* was examined on chief on 10.11.2022, however, on that day, petitioner's Counsel was not present. Therefore, *PWI* was not cross- examined. Immediately, the petitioner engaged a new Counsel and filed a petition under Section 311 of Cr.P.C to recall *PWI* for the purpose of cross-examination in Crl.M.P.No.1363 of 2022, but the same was dismissed on 23.12.2022. Challenging the dismissal order, present petition is filed.



Crl.OP.No.533 of 2023

WEB COPY

3. The learned Government Advocate (Crl. Side) strongly opposes this petition on the ground that the petitioner and his counsel pretty well know that *PWI* would be examined on 10.11.2022. The victim girl was aged about 15 year old at the time of cross examination. There is a bar **under Section 33(5) of Protection of Children from Sexual Offences Act** to repeatedly call the victim girl to testify in the Court. He further submitted that non-availability of the advocate is not a ground for recalling of evidence.

4. Considered the rival submissions and perused the records. There is no doubt that there is a bar **under Section 33(5) of Protection of Children from Sexual Offences Act** that the victim girl shall not be called repeatedly to testify in the Court. In the case on hand, the case was posted for evidence of *PWI* on 07.04.2022, 30.05.2022, 04.07.2022 and 01.08.2022, but the the victim girl was not present before the Court. The said case was again posted on 09.09.2022 and on that day, *PWI (victim girl)* was present before the Court but it appears from the order, that the victim girl was very much upset and therefore she was not



Crl.OP.No.533 of 2023

able to give evidence on 09.09.2022. The learned Judge directed the Inspector of Police to give proper counseling to the victim girl and as per the direction, proper counseling was given to her and thereafter *PW1(victim girl)* was examined on 10.11.2022. This Court understands the plight of the victim girl in coming to the Court. However, in Criminal trial cross-examination of a witness is absolutely necessary to render justice.

5. Considering the claim of the petitioner that he could not reach out to his advocate for the purpose of cross-examination on 10.10.2022 and that cross-examination of evidence is a legal requirement and that a petition was filed immediately for recall of *PW1*, this Court is of the considered view that this petition may be allowed on the following conditions:

The order passed by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore in Crl.M.P.No.1363 of 2022 in Spl.C.C.No.90 of 2021 dated 23.12.2022 is set aside and this Court allows the petition to recall *PW1* on condition that the



Crl.OP.No.533 of 2023

petitioner should pay a sum of Rs.10,000/- to the *PW1* (victim girl). On such payment through Court, learned Judge is directed to fix a date for the purpose of cross-examination of *PW1* by taking all necessary precautions. On the date of appearance of the victim girl, the petitioner should complete the cross-examination on the same day. It is made clear that failing to avail this opportunity, will not entitle the petitioner to again seek the remedy of cross -examination of *PW1*.

6. Accordingly, this Criminal Original Petition is allowed.

11.01.2023

Internet : Yes / No

Index : Yes / No

Speaking/Non speaking order

Sma

NOTE : Issue Order Copy on 12.01.2023

To.

1. The Inspector of Police,
All Women Police Station,
Coimbatore East,

5/7



Crl.OP.No.533 of 2023

Coimbatore.

2. The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN,J.

Sma

Crl.O.P.No.533 of 2023

19.12.2022

6/7



WEB COPY



Crl.OP.No.533 of 2023