



WEB COPY



Crl.O.P.No.554 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.554 of 2023

Raja

... Petitioner

Vs.

The State Rep.,by
The Inspector of Police,
AWPS Police Station,
Tiruvannamalai.

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed in CMP No.1312/2022 in Spl.S.C.No.41/2021 dated 17.10.2022 passed by the Special Court for Exclusive Trial of cases under POCSO Act, Tiruvannamalai.

For Petitioner : Mr.B.Jawahar

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

ORDER

This Criminal Original Petition has been filed to set aside the order passed in CMP No.1312/2022 in Spl.S.C.No.41/2021 dated 17.10.2022 passed by the Special Court for Exclusive Trial of cases under POCSO Act, Tiruvannamalai.



Crl.O.P.No.554 of 2023

2. The learned counsel for the petitioner submitted that PW1 & 2 could not be cross-examined for the reason that certain important documents were not available with the accused, when they were examined in chief. Petitioner filed a petition in Crl.M.P.No.1312 of 2022 for the purpose of recalling PW 1 & 2. The said petition was dismissed on 17.10.2022. Challenging the dismissal order, present petition is filed. He further submitted that if PW1 & PW2 are not permitted to be cross-examined, petitioner would be seriously prejudiced. Thus, he prays for recall of PW1 & PW2.

3. The learned Government Advocate (Crl. Side) strongly opposes the petition on the ground that there is a provision under Section 33(5) of POCSO Act that the victim girl should not be repeatedly summoned to the Court for the purpose of cross-examination. Not only that, the accused in this case had deliberately absconding.

4. Considered the rival submissions and perused the records. On going through the order of the learned Judge and the submission of the learned counsels on either sides, this Court finds that PW1 (Mother of the Victim Girl) was examined in chief on 26.10.2021 and PW2 (Victim Girl) was examined in



Crl.O.P.No.554 of 2023

chief on 08.03.2022. On 26.10.2021, PW1 & PW2 were present. The petitioner, though present in the morning, when the case was taken up for examination of witnesses, he was not present and absconded. PW1 was examined and examination of PW2 was adjourned. When PW2 was examined on 08.03.2022, she was not cross-examined by the accused. Thus, the learned Judge found that the petitioner had deliberately omitted to cross-examine PW1 & PW2. Petitioner is the teacher of PW2. Victim girl should not be called repeatedly for giving evidence. For these reasons, the learned Judge dismissed the petition.

5. This Court concurs with the finding of the learned Judge that the victim girl should not be repeatedly called for giving evidence and there is a prohibition in Section 33(5) of POCSO Act. However in a criminal case, cross-examination of witnesses is absolutely necessary for rendering correct and true justice. Therefore, this Court is of the view that petitioner filed petition under Section 311 of Cr.P.C can be allowed subject to certain conditions.

6. Thus this Court allows the recall petition on payment of Rs.10,000/- to PW1 and Rs.25,000/- to the PW2. On such payment of costs, the learned



Crl.O.P.No.554 of 2023

Judge is directed to serve summons to the witnesses for their appearance for the purpose of cross-examination. On the date of appearance of the witnesses, 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 these witnesses.

7. With the above conditions and observations, this Criminal Original Petition is allowed.

11.01.2023

sma/nst

To,

1. The Inspector of Police,
AWPS Police Station,
Tiruvannamalai.
2. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.554 of 2023

G.CHANDRASEKHARAN,J.

sma

Crl.O.P.No.554 of 2023

11.01.2023