



Crl.O.P.No.551 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:11.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.551 of 2023

Imman Ali

... 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 C.M.P.No.1290/2022 in Sp.S.C.No.118/2019 dated 10.10.2022, 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 C.M.P.No.1290/2022 in Sp.S.C.No.118/2019 dated 10.10.2022, passed by the Special Court for exclusive trial of cases under POCSO Act, Tiruvannamalai.



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2. The learned counsel for the petitioner submitted that the petitioner PW1 namely Harshiya was examined in chief on 27.10.2022, PW2 namely Arulmurugan, and PW3 namely Durai were examined in chief on 18.02.2020. PW4, namely Kulsar was examined in chief on 03.03.2020. Further P.W5 namely Dinesh, PW6 namely Vinoth and PW7 namely Dhanam were examined in chief on 23.03.2021. Further PW10 namely Murugan, PW11 namely Harun Basha, PW12 namely Begam were examined in chief on 13.09.2021 and they were not cross examined for the reason that certain documents and materials were not available with the petitioner. Unless they are cross examined, petitioner would be put to serious prejudice. Therefore, petitioner filed Crl.M.P.No.1290 of 2022 for the purpose of recalling of witnesses for cross-examination. However, the said petition was dismissed on 10.10.2022. Challenging the said dismissal order, present petition is filed.

3. The learned Government Advocate (Crl. Side) strongly opposes the petition on the ground that victim girl is aged about 18 years at the time of examination. Petitioner had deliberately omitted to cross-examine not only the victim girl but also other witnesses, just to protract the trial. Though the witnesses were examined during the period 2020 to 2021, petitioner filed this petition only in the year 2022. Therefore, prays for dismissal of the petition.



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4. The perusal of the order passed by the learned Special Judge for POCSO Cases at Thiruvannamalai shows that the learned Judge taking into consideration of the legal position that the victim girl shall not be repeatedly called to testify in the Court, and following the judgement of the **Hon'ble Supreme Court of India** made in **Vinoth Kumar Vs State of Punjab – 2015(3) SCC – 220** and **Sakthivel Vs. State rep by Inspector – reported on 11.06.2019**, dismissed the recall petition.

5. However, in a criminal case, cross examination of the witnesses is absolutely necessary for rendering correct and true judgement. Though this Court is not satisfied with the reasons given by the petitioner for not cross-examining prosecution witnesses, this Court finding that none of these witnesses was cross-examined, is of the view that the petitioner may be given one more opportunity for cross-examining the witnesses on certain conditions.

6. Accordingly, this petition is allowed subject to payment of costs of Rs.25,000/- to PW1 and Rs. 5,000/- each to other prosecution witnesses on such payment through court, learned judge is directed to send summons to the witnesses on specified days fixed by the learned judge for the purpose of cross-



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examination of these witnesses. On the date of their appearance for the purpose of cross-examination, petitioner should cross-examine the witnesses. Failing to avail the opportunity of cross-examination of these witnesses on the date of the appearance of these witnesses, will not entitle the petitioner to again seek the remedy of cross-examination of these witnesses.

11.01.2023

sma

To,

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



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G.CHANDRASEKHARAN,J.

sma/nst

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