



Crl.O.P.No.1500 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P. No. 1500 of 2023

and

Crl.M.P.No.888 of 2023

R.Satya Prakesh

... Petitioner

Vs.

The Inspector of Police,
AWPS, W-27, Vadapalani,
Chennai – 600 083.

...Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the entire records in connection with Spl.S.C.No.64 of 2022 on the file of the learned POCSO Court at Chennai and Set-aside the order passed in Crl.M.P.No.17 of 2023 by allowing partly and to allow the re-call of PW2 (victim) for further cross-examination.

For Petitioners : Mr.T.Shanmugaboopathi

For Respondents : Mr.S.Santhosh

Government Advocate (Crl.Side)

ORDER



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This Criminal Original Petition is filed to call for the records made in Crl.M.P.No.17 of 2023 in Spl.S.C.No.64 of 2022 dated 06.01.2023 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and set-aside the same.

2. The learned counsel for the petitioner submitted that the petitioner filed petition under Section 311 of Cr.P.C for recall of PW1 and PW2 for the purpose of further cross-examination. The earlier Counsel had not properly cross-examined the PW1 and PW2 and he failed to elicit the contradictions found in the evidences in the manner known to law. Therefore, petitioner filed a petition in Crl.M.P.No.17 of 2023 before the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai for the purpose of recalling PW1 & PW2 for further cross-examination. However, the learned Judge allowed the recall petition in respect of PW1 and dismissed in respect of PW2, necessitating the filing of this petition.

3. The learned Government Advocate (Crl. Side) opposes the petition



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on the ground that failure to conduct effective cross-examination by the earlier Counsel is not a ground for permitting recall of witnesses. 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.

4. Considered the rival submissions. Reading of the order made in Crl.M.P.No.17 of 2023 by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai shows that both PW1 and PW2 were cross-examined by the accused. However, the learned Judge finding the reason stated by the petitioner for recall of PW1 and PW2 that earlier Counsel had failed to ask certain questions in the cross-examination, it is not a sufficient reason for permitting the recall petition in the interest of justice, allowed the recall petition in respect of PW1 and dismissed in respect of PW2 on the ground that the victim girl should not be repeatedly called to testify in the Court.

5. This Court on going through the order of the learned Judge finds that there is no reason to take different view in this matter, since PW2 was already cross-examined and there is a prohibition under Section 33(5) of



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POCSO Act that the victim girl should not be repeatedly called to testify in

the Court. This Court finds that there is no merits in the petition. Therefore, this Court is not inclined to interfere with the order passed in Crl.M.P.No.17 of 2023 by the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

6. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

30.01.2023

Index :Yes/No
Internet:Yes/No
Sma

To

1. Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.
2. The Inspector of Police, AWPS, W-27, Vadapalani, Chennai – 600 083.
3. The Public Prosecutor, High Court of Madras.



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G.CHANDRASEKHARAN, J.

Sma

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