



WEB COPY



Crl.O.P.No.1850 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1850 of 2023

and

Crl.M.P.No.1029 of 2023

Suresh

...

Petitioner

Vs.

State by Inspector of Police,
W-32, All Women Police Station,
Madipakkam
Chennai 600 091.
(Crime No.9 of 2020)

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 02.08.2022 passed in Crl.M.P.No.448 of 2022 in Spl.S.C.No.72 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Case under POCSO Act, Chengalpattu and allow the above Criminal Original Petition.

For Petitioner : Ms.G.Manju

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER



Crl.O.P.No.1850 of 2023

This Criminal Original Petition is filed to set aside the order dated 02.08.2022, passed in Crl.M.P.No.448 of 2022 in Spl.S.C.No.72 of 2020, on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu.

2.The learned counsel for the petitioner submitted that petitioner filed Crl.M.P.No.448 of 2022 in Spl.S.C.No.72 of 2020 under Section 311 Cr.P.C., to recall PWs 1 to 3 for the purpose of cross examination. It is the submission of the learned counsel for the petitioner that these witnesses could not be cross examined when they are examined in chief. It is just, necessary and essential that these witnesses have to be cross examined for the right decision to be made. If petitioner is not permitted to cross examine these witnesses, he will be put to irreparable loss and therefore, he filed petition under Section 311 Cr.P.C. The learned Sessions Judge, without considering the merits of the petitioner's claim, dismissed this petition. Challenging the said order, this petition is filed.

3.The learned Government Advocate (Crl.Side) submitted that PW1



Crl.O.P.No.1850 of 2023

Tmt.V.Lakshmi, mother of the victim girl, PW2 Umashankar and PW3 Parandhaman are the witnesses to observation Mahazar and confession statement of the accused. PWs 1 & 2 were examined in chief on 27.10.2021 and PW3 was examined in chief on 10.11.2021. Petitioner had not cross examined these witnesses deliberately despite there was sufficient opportunity for recalling of these witnesses. No step was taken by the petitioner for recalling of these witnesses. LW2 is the victim girl. Victim girl has not been examined and she is no more. He further submitted that only to harass the witnesses, this petition is filed and thus, he prayed for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.It is seen from the order of the learned Sessions Judge that PWs 1 & 2 were examined in chief on 27.10.2021 and PW3 was examined in chief on 10.11.2021. On that date, witnesses had not been cross examined by the accused. Now the case is pending for questioning the accused under Section 313 Cr.P.C. The order further reads that petitioner had committed aggravated sexual assault on the victim girl repeatedly. While the petitioner was in jail, he



Crl.O.P.No.1850 of 2023

contacted the victim girl over mobile phone and threatened and tortured her.

Due to his torture, victim girl committed suicide on 16.10.2020. This order of the learned Sessions Judge shows that petitioner had deliberately omitted to cross examine PWs 1 to 3. He had threatened the victim girl while he was in custody and drove her to commit suicide. Now this case is pending for questioning the accused under Section 313 Cr.P.C.

6.Considering the fact that cross examination of witnesses is necessary in a criminal case for reaching a correct conclusion and the fact that PWs 1 to 3 were not cross examined earlier, this Court is of the view that the order of the learned Sessions Judge can be modified to the effect that petitioner may be permitted to recall and cross examine PWs 1 to 3 subject to certain conditions.

7.Accordingly, this Criminal Original petition is allowed subject to payment of costs of Rs.10,000/- each to PW1 to PW3. On such payment through Court, learned Sessions Judge is directed to recall PW1 to PW3 for the purpose of cross-examination. On the date of their appearance for the purpose of cross-examination, petitioner should cross-examine the witnesses on same day. Else, petitioner would lose the opportunity of cross examining



Crl.O.P.No.1850 of 2023

PWs 1 to 3 forever.

WEB COPY

8.In fine, this Criminal Original Petition is allowed. Consequently,
connected miscellaneous petition is also closed.

30.03.2023

sli

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

To:

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Chengalpattu.

2.The Inspector of Police,
W-32, All Women Police Station,
Madipakkam, Chennai 600 091.
(Crime No.9 of 2020)

3.The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.1850 of 2023

G.CHANDRASEKHARAN, J.
sli

Crl.O.P.No.1850 of 2023

30.03.2023