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Crl.O.P.No.1870 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1870 of 2023

Mohammed Irsath ... Petitioner

Vs.

The Union Teerritory of Puducherry
Represented by the
The Inspector of Police,
Ariyankuppam Police Station,
Puducherry,
Cr.No.15 of 2016

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 17.08.2022 passed in Cr.M.P.No.2168 of 2022 in Special SC.No.10 of 2016 on the file of the learned Special Judge (under POCSO Act), Puducherry and further recall the P.W.1.

For Petitioner : Mr.V.S.Senthilkumar

For Respondents : M/s.K.S.Mohandoss

Public Prosecutor of Pondicherry

Assisted by M/s.N.Danalatchoumy

ORDER

This Criminal Original Petition has been filed to set aside the order dated 17.08.2022 passed in Cr.M.P.No.2168 of 2022 in Special SC.No.10 of 2016 on the file of the learned Special Judge (under POCSO Act), Puducherry



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and further recall the P.W.1.

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2. Petitioner filed Crl.M.P.No.2168 of 2022 for recall of P.W.1. That petition was dismissed by the learned trial Judge. Challenging the said dismissal order, this petition is filed.

3. On going through the records this Court found that there are contradictory observation with regard to cross-examination of P.W.1. It was stated in the order “the perusal of records reveals that P.W.1 was examined and cross-examined by the defence side on 26.08.2019”. The learned counsel for the petitioner produced copy of the deposition of P.W.1 to show that P.W.1 was not cross-examined. Therefore, this Court called for a report from the learned Special Judge (under POCSO Act), Puducherry, to inform as to whether P.W.1 was cross-examined or not. The learned Special Judge (under POCSO Act), Puducherry, sent a report stating that P.W.1 was not cross-examined on 27.11.2018. On 19.04.2022, petition under Section 311 Cr.P.C. was filed for recalling P.W.1 for the purpose of cross-examination and that petition was dismissed as not pressed. Again, petition under Section 311 Cr.P.C. to recall P.W.1 was filed on 10.08.2022 and that petition was dismissed for not giving reasons for recalling P.W.1. It is further stated in the



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report that it was inadvertently referred in the order that P.W.1 was fully cross-examined, but the fact remains that P.W.1 was not cross-examined in this case.

4.The learned counsel for the petitioner further submitted that petitioner already filed a petition to recall P.W.1 to P.W.4 in Crl.M.P.No.517 of 2020 and that was allowed on 25.02.2020. Thereafter, P.W.2 to P.W.4 were cross-examined. Due to intervention of Covid-19 situation P.W.1 could not be cross-examined.

5.The learned Public Prosecutor for Puducherry, strongly opposed this petition on the ground that a case was of the year 2016. P.W.1 is the victim girl and she had given clear and cogent evidence in support of the complaint allegations. Petitioner deliberately omitted to cross-examine P.W.1 when the case is pending for arguments, this petition is filed just to subvert the criminal justice system and to harass P.W.1, the victim girl.

6.Considered the rival submissions and perused the records.

7.There is no doubt that cross-examination of witness should be



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completed on the same date. It is seen from the records that P.W.1 was chief examined on 27.11.2018. The petitioner has not chosen to cross-examine P.W.1. Only in 2020, petitioner filed petition to recall P.W.1 to P.W.4. Even then no effective steps were taken by petitioner to cross-examine P.W.1, but only P.W.2 to P.W.4 were cross-examined. Another petition filed on 19.04.2022 for recall of P.W.1 was not pressed by the petitioner resulting in dismissal of the petition. Then on 10.08.2022, filed the petition for recall of P.W.1 without giving any substantial reasons. That petition came to be dismissed for not giving proper reasons for recall of P.W.1. The conduct of the petitioner shows that petitioner was not at all interested in cross-examination of P.W.1 for the reasons best known to the petitioner. However, this being a criminal case, cross-examination of a witness is absolutely necessary to find out the truth of the case. The victim girl, it is reported that has attained majority now. In the said circumstances and also considering the fact that petitioner should be given an opportunity to cross-examine P.W.1 to advance the cause of justice, this Court is of the view that this petition may be allowed on payment of costs to P.W.1. Thus, this Court directs the petitioner to pay a costs of Rs.10,000/- to P.W.1. On such payment of cost through the Court, the learned Special Judge (under POCSO Act), Puducherry, is directed to summon



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P.W.1 for the purpose of cross-examination. P.W.1 should be cross-examined on the same day of her appearance for the purpose of cross-examination.

Thereafter, the case has to be disposed of within a period of one month.

8. With the above direction and observation, this Criminal Original Petition is disposed of.

14.02.2023

ep

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Inspector of Police,
Ariyankuppam Police Station,
Puducherry.

2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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