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Crl.O.P.No.3010 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3010 of 2023

Crl.M.P.No.1790 of 2023

Lingesan

... Petitioner

VS

The State Represented by
Inspector of Police,
R.5, Virugambakkam Police Station,
Chennai.
(Crime No.529 of 2013)

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records made in impugned order in Crl.M.P.No.73 of 2023 in Spl.S.C.No.273 of 2018, R-5, Police Station, on 20.01.2023 on the file of the Special Court under POCSO Act, Chennai and set aside the same as illegal and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.S.Santhosh
Government Advocate (crl.side)



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ORDER

This Criminal Original Petition has been filed to call for the records made in impugned order in Crl.M.P.No.73 of 2023 in Spl.S.C.No.273 of 2018, R-5, Police Station, on 20.01.2023 on the file of the Special Court under POCSO Act, Chennai and set aside the same as illegal.

2.The learned counsel for the petitioner submitted that petitioner filed Crl.M.P.No.73 of 2023 under Section 311 Cr.P.C. for recall of P.W.1/the victim child and P.W.2/defacto complainant/mother of the victim child. The learned trial Judge allowed the petition in part by permitting the recall of P.W.2 and dismissed the prayer for recall of P.W.1 for the reason that a child witness cannot be repeatedly asked to appear before the Court for giving evidence, as there is prohibition under Section 33 (5) of POCSO Act.

3.He further submitted that a victim girl is now aged 20 and therefore if petitioner is not permitted to cross-examine the victim girl,



petitioner would be seriously prejudiced.

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4.In response, the learned Government Advocate (Criminal side) submitted that P.W.1 was examined in 2020. Keeping quiet from 2020, this petition is filed now and he prays for dismissal of this petition.

5.Considered the rival submissions and perused the records.

6.It is seen from the submissions and records that P.W.1 victim girl was not cross-examined earlier. Though, this Court is not in agreement with the reasons stated for not cross-examining P.W.1, in the facts and circumstances of the case, cross-examination of P.W.1 is absolutely necessary to bring out the truth. Now she has become major. In the said circumstances, this Court allows this petition by setting aside the order dated 20.01.2023 in Crl.M.P.No.73 of 2023 in Spl.S.C.No.273 of 2018, passed by the learned Sessions Judge, Special Court for exclusive trial of case under POCSO Act, Chennai, in so far as the dismissal of recall of P.W.1 and allows the petition to recall P.W.1 subject to the following conditions:-



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i)petitioner must pay costs of Rs.5,000/- to P.W.1 through Court and,

ii)cross-examination of P.W.1 should be completed on the same date when she appears before the Court for cross-examination.

7.With the above direction and observation, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

07.03.2023

Index: Yes/No

Speaking/Non speaking order

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G.CHANDRASEKHARAN, J.

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To

1.The Sessions Judge,
Special Court for exclusive trial of
case under POCSO Act, Chennai.

2.Inspector of Police,
R.5, Virugambakkam Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

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