



Crl.O.P.No.4048 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4048 of 2023 &
Crl.M.P.No.2551 of 2023

Saravanan

... Petitioner

Vs.

The State Represented by
Inspector of Police
All Women Police Station
Perambalur District.

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the order passed by the learned Sessions Judge, Mahila Court, Perambalur passed in Crl.M.P.No.91 of 2023 in Spl.S.C.No.16 of 2022 dated 24.01.2023 and to set aside the same and consequently allow this petition.

For Petitioner : Mr.G.Ilamurugu

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



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ORDER

This Criminal Original Petition has been filed to call for the records of the order passed by the learned Sessions Judge, Mahila Court, Perambalur passed in Crl.M.P.No.91 of 2023 in Spl.S.C.No.16 of 2022 dated 24.01.2023 and to set aside the same and consequently allow this petition.

2.Learned counsel for the petitioner submitted that, the petitioner filed a petition under Section 311 Cr.P.C seeking recall of PW2, victim girl for the purpose of further cross examination in Crl.M.P.No.91 of 2023. This petition was dismissed by learned Sessions Judge on 24.01.2023.

3.Challenging the said order, this petition is filed.

4.It is submitted by the petitioner that after examination of PW2, PW3 to PW7 were examined. When PW6 was examined, Ex.P7 and Ex.P8 were marked. On the date of alleged occurrence, the records shows that victim girl was present in the School. Therefore, it has to be clarified. However, due to dismissal of the petition, the petitioner was denied the opportunity of proper



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defence.

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5.In response, learned Government Advocate (Criminal side) submitted that PW2, victim girl was called for giving evidence, for recording of chief examination and then for cross examination. At the time of occurrence, she was aged 14 years. Now, she is 15 years old. There is a bar under Section 33(5) of POCSO Act, 2012 that victim should not be repeatedly called for giving evidence.

6.Considered the rival submissions and perused the records.

7.It is seen from the Order of the learned Sessions Judge that, charges were framed against the accused on 20.09.2022. PW2, victim girl was examined in chief on 13.10.2022. It appears that, she was not cross examined, on the date of recording her chief examination. On 14.10.2022, petitioner filed a petition under Section 311 Cr.P.C, for recalling the PW2 and that was allowed on 20.10.2022. Thereafter, one Mr.N.Srinivasan, learned Advocate filed a memo of appearance for the accused and on 03.11.2022, the said learned Advocate cross



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examined PW2. Then on 24.11.2022, Mr.S.Ravichandran, learned Advocate has filed a vakalat for petitioner/accused. Thereafter, PW3 to PW7 had been examined. Now the present petition is filed to recall PW2 for the purpose of further cross examination, on the ground that, previous Advocates did not cross examine PW2 properly. He omitted to ask certain important questions, due to his ignorance. Learned Judge found that PW2 was extensively cross examined and that the change of counsel and omission to ask certain important questions are not grounds for ordering recall of PW2 and that PW2 is aged only 14 years. Therefore, he dismissed the petition.

8.This Court, on going through the detailed and well considered order of the learned Sessions Judge, finds that PW2 was extensively cross examined by the accused. The reasons stated in the affidavit for the purpose of further cross examination that prior counsel omitted to ask important questions and did not cross examine properly, are certainly not valid reasons, for again recalling the witness, especially a child witness, who is still a minor.

9. However, in order to ascertain the fact, as to whether the copies of Ex.P7 and Ex.P8 were supplied to the accused or not, prior to examination of PW2, this case was adjourned to 01.03.2023. Learned Government Advocate



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(Criminal side) was directed to get suitable instructions in this regard.

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10. When the matter is taken up today, it is reported by the learned Government Advocate (Criminal side) that Ex.P7 and Ex.P8 were produced only through P.W.6 and copies of these documents had not been supplied to the accused. In view of the revelation of the fact that Ex.P7 and Ex.P8 were produced subsequent to examination of P.W.2, that the copies of those documents were not supplied to the accused, this Court is of the view that P.W.2 should be cross-examined on Ex.P7 and Ex.P8 documents. In this view of the matter, this Court allows this petition by setting aside the order passed in Crl.M.P.No.91 of 2023 in Spl.S.C.No.16 of 2022 dated 24.01.2023 by the learned Sessions Judge, Mahila Court, Perambalur. The learned Sessions Judge, Mahila Court, Perambalur, is directed to summon P.W.2 for the limited purpose of cross-examination on Ex.P7 and Ex.P8 documents and nothing more.

11. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

01.03.2023



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Index:Yes/No

Speaking/Non speaking order

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G.CHANDRASEKHARAN.J.,

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To

1.The Sessions Judge, Mahila Court,
Perambalur.

2.Inspector of Police
All Women Police Station
Perambalur District.

3. The Public Prosecutor,
High Court of Madras.

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