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Crl.O.P.No.6246 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.6246 of 2023

and

Crl.M.P.No.3902 of 2023

Nasir Ahamed

...

Petitioner

-VS-

The Inspector of Police,
E3 Police Station,
Saravanampatti, Coimbatore,
(Crime No.1026 of 2019)

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 08.06.2022 in CMP.No.616 of 2022 in Spl.CC.No.27of 2020 on the file of the Special Court for Exclusive Trial of POCSO Act, Coimbatore and permit the petitioner to cross examine the PW1 and pass such further or other orders.

For Petitioner

...

Ms.S.Pooja Shree

For Respondent

...

Mr.S.Santhosh
Government Advocate (crl.side)



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ORDER

This Criminal Original Petition has been filed to set aside the order dated 08.06.2022 in CMP.No.616 of 2022 in Spl.CC.No.27of 2020 on the file of the Special Court for Exclusive Trial of POCSO Act, Coimbatore and permit the petitioner to cross examine the PW1 and pass such further or other orders.

2. It is the submission of learned counsel for the petitioner that, petitioner filed a petition under Section 311 Cr.P.C in CMP.No.616 of 2022 in Spl.C.C.No.27 of 2020, for recalling PW1 to PW3. The learned Special Judge, Special Court for Exclusive Trial of POCSO Act, Coimbatore, partly allowed the petition, permitting recalling of PW2 and PW3 for the purpose of cross examination, but dismissed the petition insofar as PW1 is concerned. The reason given by the learned Special Judge is that, PW1 is a victim girl and she was 14 years, at the time of the commission of the offence and victim girl should not be repeatedly called for giving evidence. Challenging this order, the present petition is filed to set aside the order dated 08.06.2022 in CMP.No.616 of 2022 in Spl.CC.No.27of 2020 on the



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file of the Special Court for Exclusive Trial of POCSO Act, Coimbatore.

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3. Learned Government Advocate (Criminal side) submitted that victim girl has now attained majority. However, he submitted that repeated calling of witnesses would amount to harassment and it would also jeopardise a fair trial.

4. Considered the rival submissions and perused the records.

5. This Court finds from the Order of the learned Special Judge, that PW1 to PW3 were examined on 01.02.2021 and after one year and four months, petitioner filed petition for recalling of PW1 to PW3. This Court finds that the reason given by the learned Special Judge for denying the recalling of PW1 is justifiable. However, in criminal trial cross examination of witnesses, especially material witnesses is absolutely necessary for arriving at a correct decision. It is now reported that PW1 has attained majority.



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6. Taking all these facts into consideration, this Court is of the view that PW1 may be permitted to be recalled for the purpose of cross examination, on payment of costs.

7. Accordingly, this Court directs the petitioner to pay Rs.10,000/- (Ten Thousand Only) as costs to PW1 through Court. On such payment, learned Special Judge, the Special Court for Exclusive Trial of POCSO Act, Coimbatore is directed to recall PW1 for the purpose of cross examination and cross examination should be completed on the day when PW1 appears before Court.

8. With the above directions, this Criminal Original Petition is disposed of. Accordingly, the connected Miscellaneous Petition is closed.

20.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking order



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- 1.The Special Court for Exclusive Trial for Exclusive Trial of POCSO Act,
Coimbatore.
- 2.The Inspector of Police,
E3 Police Station,
Saravanampatti, Coimbatore,
- 3.The Public Prosecutor,
High Court, Madras.



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G.CHANDRASEKHARAN, J.

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