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Crl.O.P.No.8949 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.8949 of 2023

Raman M

...Petitioner

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Arani,
Thiruvanamalai District.
(Crime No.11 of 2021)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in Crl.M.P.No.502 of 2023 in Spl.S.C.No.59 of 2021 on the file of the Special Court Exclusive for POCSO Act, dated 14.03.2023, and set aside the same.

For Petitioner : Mr.S.Seenuvasan

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



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ORDER

This Criminal Original Petition is filed to call for the records in Crl.M.P.No.502 of 2023 in Spl.S.C.No.59 of 2021 on the file of the Special Court Exclusive for POCSO Act, dated 14.03.2023, and set aside the same.

2. Learned counsel for the petitioner submitted that, petitioner filed petition for recalling PW1 and PW3 for the purpose of further cross examination in Crl.M.P.No.502 of 2023 in S.C.No.59 of 2021. This petition was dismissed by the learned Sessions Judge on 14.03.2023, without considering the petitioner's genuine request. It is the submission of the learned counsel for the petitioner that certain material questions have been omitted to be asked to these witnesses. Unless these witnesses are again recalled for the purpose of further cross examination, petitioner would be seriously prejudiced. Therefore, this petition is filed to set aside Crl.M.P.No.502 of 2023 in Spl.S.C.No.59 of 2021 on the file of the Special Court Exclusive for POCSO Act, dated 14.03.2023.

3. Learned Government Advocate (Criminal side) submitted that, the witnesses PW1 and PW3 had already been cross examined. PW1, victim girl



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was aged 6 years at the time of the occurrence. PW3 was aged 9 years at the time of the occurrence. Both witnesses had been examined in chief and then cross examined. If these witnesses are again and again called for examination, it would be a harassment to them. Therefore, he prayed for dismissal of this petition.

4. Considered the submissions and perused the records.

5. The reason for recalling of PW1 and PW3 is that, certain important questions had been omitted to be put to these witnesses. It is seen from the Order of the learned Sessions Judge, Special Court Exclusive for POCSO Act that, PW1 was examined in chief on 11.07.2022 and PW3 was examined in chief on 01.08.2022. Both witnesses had been cross examined. The examination of prosecution witnesses is over and case is pending for defence evidence. It was also recorded that, the petition filed for recalling of PW1 and PW3 was filed 7 months after their examination is over.

6. From the submissions of the learned counsel for the parties and Order of the Sessions Judge, this Court finds that PW1 and PW3 are aged



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between 7 to 10 years. PW1 is a victim girl. There is a Bar under Section 33(5) of the POCSO Act to repeatedly call victim girl for the purpose of examination.

Section 33(5) of POCSO Act reads that,

“33(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court. “

There is no doubt that, repeated summoning of witnesses for the purpose of cross examination amounts to harassment of the witnesses, especially child witnesses and in a way it amounts to persecution. There is also a possibility of contradiction in the evidence of the witnesses due to lapse of time or confusion in the minds of the witnesses due to repeated examination. Therefore, the learned Sessions Judge, Special Court Exclusive for POCSO Act rightly dismissed the petition. There is no need to interfere with the Order passed by the learned Sessions Judge on 14.03.2023.

7. Accordingly, this Criminal Original Petition is dismissed.

24.04.2023

Internet :Yes
Index :Yes/No
gd



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To:

- 1.The Special Court Exclusive for POCSO Act,
Thiruvannamalai.
- 2.The Inspector of Police,
All Women Police Station,
Arani,
Thiruvannamalai District.
- 3.The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN, J.



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