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Crl.O.P.No.10744 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.10744 of 2023

S.Suresh

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station West,
Coimbatore District,
Crime No.4 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order passed by Learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore in CRL MP.No.61 of 2023 dated 17.03.2023.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order passed by Learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore in CRL MP.No.61 of 2023 dated 17.03.2023.



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2. Learned counsel for the petitioner submitted that, petitioner is facing trial in Spl.S.C.No.56 of 2022 for the offences under Sections 5(m), 6 of POCSO Act, 2012 and 376 AB, 450 of IPC and 3(1)(w)(i), 3(2)(v) of SC/ST Act. PW1 and PW2 were examined in chief. They could not be cross examined by the petitioner, for the reason that, petitioner's Senior counsel was ill and he was not able to appear before the Court, for the purpose of cross examination. Petitioner filed Crl.M.P.No.61 of 2023 for recalling PW1 and PW2. The trial Court partly allowed the petition, permitting recall of PW2 and dismissed the recall of PW1. PW1 is a victim girl. Unless petitioner is permitted to recall PW1, for the purpose of cross examination, petitioner would be seriously prejudiced. Thus, this petition.

3. In response, learned Government Advocate (Criminal side) submitted that, PW1 is the victim girl, aged about 6 years. She was examined in chief on 30.12.2022. Victim of sexual violence, especially minor girl cannot be asked to repeatedly appear before the Court for the purpose of examination. The trial Court had rightly dismissed the petition and thus, he prayed for dismissal of this petition.

4. Considered the submissions and perused the records.



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5. It is a settled position of law that, cross examination of witness should be completed on the same day, when a witness is examined in chief. Petitioner had not cross examined PW1 and PW2 on the date of chief examination. The trial Court allowed the recall of PW2. There is no doubt that, victim girl should not be asked to come to Court repeatedly for the purpose of examination. There is a Bar under Section 33(5) of the POCSO Act to repeatedly call victim girl for the purpose of examination. However, if the case is disposed, without giving an opportunity to the petitioner to cross examine the victim girl, it is no doubt, petitioner would be seriously prejudiced.

6. Taking this fact into consideration, this Court is of the view that, petitioner should be permitted to recall PW1, subject to payment of cost of Rs.5,000/- through Court.

6.1. Therefore, the order of the Learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore in CRL MP.No.61 of 2023 dated 17.03.2023 is set aside, so far as dismissing the petition for recalling PW1; Petitioner is permitted to recall PW1, victim girl, on payment of costs of Rs.5,000/- through the Court.



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6.2. PW1 should be cross examined on the day of her appearance before the Court. If petitioner fails to cross examine PW1 on the date of her appearance, petitioner cannot again seek recall of PW1 for the purpose of cross examination.

7. With the above directions, this Criminal Original Petition is ordered.

16.06.2023

Index:Yes/No
Speaking/Non speaking order
gd

To

1.The Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore

2.The Inspector of Police,
All Women Police Station West,
Coimbatore District,

3. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN.J.,

gd

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