



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.15913 of 2023

Paraman @ Paramasivam(M/31 years)
S/o.Murugan

... Petitioner/Sole Accused

Vs.

The State rep.by
Inspector of Police
All Women Police Station
Pollachi
Coimbatore District.
(Cr.No.5/2019)

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed on dated 28.4.2023 in Crl.MP.No.491/2023 in SPL.CC.No.78/2019, on the file of the Principle Special Court for Exclusive trial of cases under POCSO Act, Coimbatore.

For Petitioner : Mr.K.P.P.Raja Raja Chozhan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

**ORDER**

WEB COPY

This petition has been filed challenging the order passed by the Court below in CrI.MP.No.491/2023, which was filed u/s 311 Cr.PC., for recalling PW.1 for cross examination.

2.The petitioner is facing trial before the Court below for offence u/s 5(1)(m)(n) r/w Section 6 of the POCSO Act, 2012 and Section 506(i) IPC. PW-1 the victim child was examined in chief on 19.01.2019 and at that point of time, the child was aged about 9 years. According to the petitioner, he was not represented by any counsel during the year 2019 and hence, the victim child was not able to be cross examined. Hence, in the year 2023, the petitioner filed an application u/s 311 Cr.PC., to recall PW-1 for cross examination. The same was dismissed by the Court below and aggrieved by the same, the present petition has been filed before this Court.

3.The petitioner was represented by a legal aid counsel initially from 13.2.2020 onwards, one Mr.Murugan, Advocate had filed Vakalat for the petitioner. Thereafter, yet another counsel was appointed by the District Legal Services Authority on 24.05.2022. From 2.6.2022 to 19.4.2023, PW.2 to PW.20 were examined. It is quite curious that the petitioner never chose to file any application to recall PW.1 immediately and he waited for the examination of the witnesses and at the stage of questioning u/s 313 Cr.PC.,



an application came to be filed in the year 2023, for recalling PW.1 for cross examination.

4.The Court below after taking into consideration the scope of Section 311 Cr.PC., and after considering the judgment of the Apex Court in **State (NCT of Delhi) .v. Shivkumar Yadav and Another** reported in **2016(2) SCC 402**, came to a conclusion that the victim girl cannot be recalled after nearly 40 months and the same will not be in the interest of the victim girl, who has suffered the agony and has also spoken about it at a tendering age of 9 years before the Court. To once again make the victim girl speak about the same incident after four years, goes against the very object of Section 33(5) of the POCSO Act, 2012.

5.This Court does not find any illegality or infirmity in the finding rendered by the Court below and it does not require the interference of this Court. In view of the above, this criminal original petition stands dismissed and there shall be a direction to the Court below to complete the trial in Spl.C.C.No.78 of 2019, within a period of **two months** from the date of receipt of copy of the order.

19.07.2023

Index: Yes/No
Internet: Yes/No
KP



WEB COPY



4

N.ANAND VENKATESH,J.

KP

To

1. Inspector of Police
All Women Police Station
Pollachi
Coimbatore District.
2. Principle Special Court for
Exclusive trial of cases under POCSO Act,
Coimbatore.
3. The Public Prosecutor,
High Court of Madras, Chennai.

Crl.O.P.No.15913 of 2023

19.07.2023