



WEB COPY



Crl.O.P.No.14048 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.14048 of 2023

and

Crl.M.P.No.8665 of 2023

R.Arunachalam

...

Petitioner

VS

The State represented by
The Inspector of Police,
AWPS, Omalur.
Crime No.2 of 2019.

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to set aside the order of dismissal in so far as recalling the prosecution witness of PWs.2, 5, 6, 7 and 9 by order dated 09.03.2022 made in C.M.P.No.18 of 2022 in Old Spl.S.C.No.40/2019 in New Spl.S.C.No.239/2019 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem by allowing this Petition and pass such further or other orders.

For Petitioner

...

Mr.R.Marudhachalamurthy

For Respondent

...

Mr.Leonard Arul Joseph Selvam
Government Advocate (crl.side)



Crl.O.P.No.14048 of 2023

ORDER

This Criminal Original Petition has been filed to set aside the order of dismissal in so far as recalling the prosecution witness of PW2, PW5, PW6, PW7 and PW9 by order dated 09.03.2022 made in C.M.P.No.18 of 2022 in Old Spl.S.C.No.40/2019 in New Spl.S.C.No.239/2019 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem by allowing this Petition

2. It is the submission of the learned counsel for the petitioner that, petitioner filed C.M.P.No.18 of 2022 in Old Spl.S.C.No.40/2019 in New Spl.S.C.No.239/2019 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem for recalling PW1 to PW11 for the purpose of cross examination. The learned trial Judge allowed the petition in part, permitting recalling of PW1, PW3, PW4, PW8, PW10 and PW11 on payment of cash batta and dismissing the prayer for recalling PW2, PW5, PW6, PW7 and PW9. Challenging the order of Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem, this petition is filed.



WEB COPY

3. It is the submission of the learned counsel for the petitioner that, these witnesses could not be cross examined, for the reason that, petitioner met with an accident and therefore, he was not able to give instructions to his counsel. PW2 is the victim girl. Since, she was not cross examined, petitioner was not able to cross examine other witnesses also. Unless PW2, PW5, PW6, PW7 and PW9, more particularly PW2 and PW7 are permitted to be recalled for the purpose of cross examination, petitioner would be seriously pre-judiced. He also threw attention of the Court with regard to the evidence given by PW2 and PW7. He further submitted that the PW7/Doctor is not the one, who actually examined the victim girl. Thus, it is absolutely necessary that these witnesses are to be recalled for the purpose of cross examination.

4. Learned Government Advocate (Criminal side) strongly opposed this petition, on the ground that, trial in this case is over and case is posted for Judgment today. He further submitted that, order dismissing Section 311 Cr.P.C petition was passed on 09.03.2022, however, this petition is filed in June 2023, after a delay of 1 year, 3^{1/2} months, challenging the



CrI.O.P.No.14048 of 2023

dismissal order. Learned trial Judge has considered and found that, reasons are not acceptable and unsustainable and dismissed the petition. Hence, he prayed for dismissal of this petition.

5. Considered the submissions and perused the records.

6. As rightly pointed out by the learned counsel for the parties, PW1 to PW11 had not been cross examined on the date of their chief examination. It is seen from the typet-set of papers produced by the learned counsel for the petitioner that, PW1 to PW11 were examined on the dates noted against them.

<i>Witnesses</i>	<i>Chief Examination Dates</i>
PW1, PW2 and PW3	15.10.2019
PW4 and PW5	07.12.2019
PW6	10.01.2020
PW7	18.02.2020
PW8	11.09.2020
PW9	25.02.2021
PW10	16.04.2021
PW11	01.12.2021



WEB COPY

7. It is seen from the order that, the reason for not cross examining these witnesses stated by the petitioner is that, petitioner met with a road accident and therefore, he was not able to give instructions to his counsel. However, the Trial Court found from the records that, this reason is not true, for the reason that, petitioner was regularly appearing before the Court on maximum number of hearings, when PW1 to PW11 were examined. Therefore, it is obvious that, the reasons stated by the petitioner for not cross examining PW1 to PW11 is not correct.

8. From the order of the learned Trial Judge, this Court finds that, petitioner is not vigilant and prompt either in cross examining PW1 to PW11 or filing petition for recalling of PW1 to PW11 for the purpose of cross examination. He has taken his own time for filing petition for cross examination of PW1 to PW11 and filing this petition, challenging the order of the learned Trial Judge.

9. However, this Court is of the view that, considering the seriousness of the offence, disposing the case without cross examining the material witnesses would not in the best interest of justice. PW2 has now become a major. In this view of the matter, this Court set asides the order



Crl.O.P.No.14048 of 2023

dated 09.03.2022 made in C.M.P.No.18 of 2022 in Old
Spl.S.C.No.40/2019 in New Spl.S.C.No.239/2019 on the file of the
Principal Special Court for Exclusive Trial of Cases under POCSO Act,
Salem, insofar as recall of PW2, PW5, PW6, PW7 and PW9 are concerned
and allows this petition. Petitioner is permitted to recall PW2, PW5, PW6,
PW7 and PW9, on payment of cost of Rs.5,000/- each. On such payment of
the amount, the learned Trial Judge is directed to recall PW2, PW5, PW6,
PW7 and PW9 for the purpose of cross examination. The cross
examination should be completed on the same day, when the witnesses
appear before the Court.

10. In the result, this Criminal Original Petition is allowed, with the
above directions. Consequently, the connected Miscellaneous Petition is
closed.

21.06.2023

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

To

Page 6 of 8



Crl.O.P.No.14048 of 2023

1. The Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem

2. The Inspector of Police,
AWPS, Omalur.

3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.14048 of 2023

G.CHANDRASEKHARAN, J.

gd

Crl.O.P.No.14048 of 2023

21.06.2023