



Criminal Original Petition No.15005 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.15005 of 2023

and

Crl.M.P.No.9317 of 2023

A.Eswaran
S/o.Ammasai

... Petitioner

-VS-

The State represented by
The Inspector of Police,
All Women Police Station,
Bhavani, Erode District.
Crime No.19 of 2019

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to set aside the order dated 17.03.2023 made in Crl.M.P.No.275 of 2023 in Spl.S.C.No.21 of 2020 passed by learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Erode, in respect of PW1.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This petition has been filed challenging the order passed by the Court below in CrI.M.P.No.275 of 2023 in Spl.S.C.No.21 of 2020, dated 17.03.2023 partly allowing the petition filed under Section 311 Cr.P.C. and dismissing the petition insofar as the recall and further cross-examination of the victim child PW-2.

2. Heard Mr.N.Manokaran, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. The petitioner is facing charges under the Protection of Child from Sexual Offences Act, 2012. PW-1, PW-2 and PW-3 [parents and victim child] were examined in chief and they were also cross-examined by the petitioner. The examination of witnesses on the side of the prosecution was completed and Section 313 Cr.P.C. questioning was also completed on 12.01.2023. The case was posted for defence witness. At that point of time, the petition came to be filed u/s.311 Cr.P.C. for recalling and further cross-examination of PWs.1 to 3.



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4. The Court below, on considering the facts and circumstances of the case and also considering the examination of witnesses that had already taken place, came to a conclusion that the petition can be entertained only insofar as PWs.1 and 3, who are the parents of the victim child and dismissed the petition insofar as the victim child [PW-2]. Aggrieved by the same, the present petition has been filed before this Court.

5. The Court below has taken into consideration the fact that the victim child was already cross-examined at length. The Court below also had borne in mind the bar u/s.33(5) of the POCSO Act, which prohibits recalling of a child witness repeatedly to testify in the Court which will put the victim child to psychological trauma. In view of the same, the Court below dismissed the petition insofar as the victim child is concerned.

6. Learned counsel for petitioner brought to the notice of this Court an order passed in CrI.O.P.No.4131 of 2022, dated 07.03.2022, where this Court had allowed the petition filed for recalling the victim child after



taking into consideration the fact that the victim child has already become a major.

7. There is no dispute with regard to the fact that the Court can always exercise its jurisdiction in order to do complete justice and in order to ensure that accused person gets a fair opportunity to defend himself in the trial. This is more so in cases involving POCSO Act in view of the reverse burden provided u/s.29 and 30 of the POCSO Act. In the case that was cited by learned counsel for petitioner, the victim girl was not even cross-examined once by the accused and it is evident from paragraph No.12 of the order. Under such circumstances, the order that has been cited by learned counsel for petitioner will not apply to the facts of the present case.

8. This Court does not find any illegality or infirmity in the order passed by the Court below and it does not require the interference of this Court. The Court below shall proceed further to complete the trial and dispose of the case in Spl.S.C.No.21 of 2020 within a period of two (2) months from the date of receipt of a copy of this order.



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In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

06.07.2023

Index: Yes/No

Speaking Order/Non-speaking Order

Neutral Citation : Yes/No

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To

1.The Sessions Judge,
Mahalir Neethi Mandram (Fast Track Mahila Court),
Erode.

2.The Inspector of Police,
All Women Police Station,
Bhavani, Erode District.
Crime No.19 of 2019.

3.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH., J

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