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CrI.O.P.No.29371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.29371 of 2022

Thavasi

...Petitioners

vs.

The State rep by
The Inspector of Police,
Tiruppur North Police Station,
Crime No.1328 of 2021,
Tiruppur District

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 17.06.2022 made in ECMP.No.423 of 2022 in Spl.S.C.No.50 of 2021 on the file of the Sessions Judge, Magalir Neethimandram, Tiruppur/Fast Track Mahila Court, Tiruppur (FAC) by allowing this petition.

For Petitioners : Mr.D.R.Arun Kumar
For Respondents : Mr.A.Gopinath,
Government Advocate

ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner in ECMP.No.423 of 2022 in Spl.S.C.No.50 of 2021 under Section 311 of CrPC to



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recall PW1 for further cross-examination.

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2. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

3. The petitioner is facing trial before the Court below for the offences under Section 363 of IPC and Section 3 read with Section 4 of POCSO Act and Section 9 of the Child Marriage Restraint Act. PW1 is the victim girl and she was examined-in-chief on 09.05.2022 and she was cross-examined on the same day on the side of the petitioner.

4. The petitioner filed an application under Section 311 of CrPC to recall PW1 for further cross-examination on the ground that the petitioner did not put certain vital questions at the time of cross-examination. This application was dismissed by the Court below on the ground that the victim girl was cross-examined in detail and there is no necessity to recall the victim girl.

5. This Court has carefully gone through the cross-examination of PW1. It is seen that the petitioner and PW1 are known to each other. The victim girl must be aged about 19 years by now. Considering the facts and circumstances of



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the case and also the fact that the petitioner and the victim girl knew each other and also considering the stringent provisions under the POCSO Act, this Court is inclined to give one last opportunity to the petitioner to recall PW1 for further cross-examination.

6. In the light of the above discussion, the above order passed by the Court below in ECMP.No.423 of 2022 in Spl.S.C.No.50 of 2021 dated 17.06.2022 is hereby set aside.

7. It is brought to the notice of this Court that the case is now posted for hearing on 28.09.2023 for cross-examination of the Investigation Officer. On that day, the victim girl shall be recalled and the cross-examination on the side of the petitioner shall be completed on the same day. Similarly, the Investigation Officer shall also be examined-in-chief and cross examined on the same day. If the petitioner fails to cross-examine PW1 on the date of her appearance before the Court below, the petitioner will loose his right to recall PW1 at a later point of time.

8. In the result, this criminal original petition is allowed in the above



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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

1.The Sessions Judge,
Magalir Neethimandram,
Tiruppur/Fast Track Mahila Court,
Tiruppur.

2.The Inspector of Police,
Tiruppur North Police Station,
Crime No.1328 of 2021,
Tiruppur District.

3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J.

nsa

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