



CrI.O.P.No.19207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.19207 of 2023

and

CrI.M.P.No.12919 of 2023

- 1.Anandan
- 2.Vijayaraj
- 3.Poongothai

...Petitioner

VS.

The State rep by
The Inspector of Police,
Tiruvannamalai All Women Police Station,
Tiruvannamalai.

...Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in order dated 11.08.2023 made in CrI.M.P.No.1550 of 2023 in Spl.S.C.No.57/2020 passed by the Special Court, POCSO Cases, Tiruvannamalai and set aside the same.



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CrI.O.P.No.19207 of 2023

For Petitioners : Mr.B.Jawahar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in CrMP.No.1550 of 2023 dated 11.08.2013 dismissing the application filed under Section 311 of CrPC to recall PW1 to PW12 for further cross-examination.

2. The petitioners are facing trial before the Court below for offence under Section 450, 376(2)(n), 506(i) IPC read with Section 5(1) and 6 of the POCSO Act.

3. This Court carefully considered the submissions made by the learned counsel for the petitioner and perused the materials available on record.

4. The petitioners have filed the application under Section 311 of CrPC to recall PW1 to PW12 for further cross-examination. It is seen from the order



CrI.O.P.No.19207 of 2023

passed by the Court below that initially PW1 to PW4 were examined-in-chief on 13.09.2021. They were not cross-examined at the relevant point of time. The witnesses, who were thereafter examined namely PW5 to PW12, have been cross-examined on the side of the petitioners. Thereafter, the accused persons were questioned the under Section 313 of CrPC and the case was at the stage of defence side evidence.

5. The petitioners filed an application in CrMP.No.517 of 2023 to recall PW1 to PW4 for cross-examination. This application was allowed by an order dated 06.04.2023. These witnesses were present before the Court below and they were cross-examined on 21.04.2023. Thereafter, the matter was adjourned at least on 4 occasions for defence side evidence and since there was no evidence on the side of the defence, the evidence was closed and the matter was posted for final arguments. The matter was adjourned at least on 11 occasions for final arguments and ultimately on 12.07.2023, the final arguments were made by both sides and the case was posted for judgement on 20.07.2023. It is at this stage, the present application came to be filled on 17.07.2023 for recalling PW1 to PW12 for further cross-examination and the same has been dismissed by the Court below.



CrI.O.P.No.19207 of 2023

6. The only ground, on which the present application was filed, is that the accused persons have chosen to change their counsel and the new counsel has taken up the case. According to the new counsel, some important questions were not asked to the witnesses during cross-examination and hence, the counsel wants to put those questions by recalling PW1 to PW12. The Hon'ble Apex Court had an occasion to deal with the very similar question in ***State of Haryana vs. Ram Mehar and others*** reported in ***2017 1 MLJ (crl) 437***, wherein it has been held that the application under Section 311 of CrPC can never be entertained on the ground that earlier counsel had not put some important questions to the witnesses and the same have to be asked by the later counsel. The Hon'ble Apex Court further held that the trial cannot be limitlessly stressed or prolonged on the ground of engaging a new counsel.

7. In the instant case, all the witnesses have already been cross-examined and the case was at the stage of passing final judgement. At that stage, the present application came to be filed before the Court below. The Court below had rightly rejected the application. This Court does not find any illegality or infirmity in the order passed by the Court below and there are absolutely no merits in this petition.



CrI.O.P.No.19207 of 2023

8. In the result, this criminal original petition is dismissed. Consequently,

the connected miscellaneous petition is closed.

22.08.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order
nsa

To

1.The Special Court, POCSO Cases,
Tiruvannamalai

2.The Inspector of Police,
Tiruvannamalai All Women Police Station,
Tiruvannamalai.

3.The Public Prosecutor,
Madras High Court,
Chennai 600 104..



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CrI.O.P.No.19207 of 2023

N. ANAND VENKATESH, J.

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CrI.O.P No.19207 of 2023
and CrI.M.P.No.12919 of 2023

22.08.2023