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Crl.OP.No.24895 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.24895 of 2022

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Petitioner

VS

State Rep. By The Inspector of Police

Cuddalore Harbour Police Station

Cuddalore, Crime No.138 of 2020

..

Respondent

PRAYER : This Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order of Special Court for POCSO Act Sessions Court, Cuddalore made in Crl.M.P.No.352 of 2021 in Spl.S.C.No.26 of 2021 dated on 23.03.2021.

For Petitioner : Mr.N.Anandhan

For Respondent : Mr.S.Santhosh

Government Advocate (Crl side)

ORDER

This Criminal Original Petition has been filed to set aside the order of Special Court for POCSO Act Sessions Court, Cuddalore made in



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Crl.M.P.No.352 of 2021 in Spl.S.C.No.26 of 2021 dated on 23.03.2021.

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2.The learned counsel for the petitioner submitted that certain questions were omitted to be asked during cross-examination of P.W.1 and P.W.3. Therefore, petitioner filed Crl.M.P.No.352 of 2021 for recalling P.W.1 and P.W.3. The learned trial Judge allowed the petition in part giving permission for recalling P.W.3, but dismissed the prayer for recalling P.W.1. Against the said order, this petition is filed.

3.The learned Government Advocate (Criminal side) opposed this petition on the ground that there is a bar under Section 33 (5) of POCSO Act, that the Special Court should ensure that a child witness is not called repeatedly to testify in the Court. The trial Court rightly dismissed the petition in so far as P.W.1 is concerned.

4.In reply the learned counsel for the petitioner relied that the order dated 07.03.2022 passed in Crl.O.P.No.4131 of 2022 for the proposition that a victim girl can be recalled for the purpose of cross-examination.



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5.Considered the rival submissions and perused the records.

6.The perusal of the order of the learned trial Judge shows that the case in Spl.C.C.No.26 of 2020 was pending from 20.07.2020. The trial was fixed for the examination of witness Nos.1 to 7 on 05.02.2021, witness Nos.8 to 14 on 08.02.2021, witness Nos.15 to 21 on 10.02.2021. Accordingly on 05.02.2021, P.W.1 to P.W.3 were examined in full. Thereafter, the case was pending for examination of P.W.4. At that stage, petition was filed for recalling P.W.1 and P.W.3. The trial Court on going through the records and finding that P.W.1 and P.W.3 were already cross-examined, relying on the judgment of the Hon'ble Supreme Court in ***Vinothkumar Vs. State of Punjab*** that victim girl should not be summoned for more than once for the purpose of examination, dismissed the petition filed for recalling P.W.1 for the purpose of further cross-examination and allowed the petition for recalling P.W.3 on payment of costs of Rs.1000/-.

7.The order relied by the learned counsel for the petitioner is a case,



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where the victim girl was not cross-examined earlier. Therefore, cross-examination was permitted since she attained majority. In the case before hand, though P.W.1 has now attained majority, she was extensively cross-examined by the accused. Therefore, the order in Crl.O.P.No.4131 of 2022 is not applicable to the facts of this case. Considering the fact that P.W.1 was already cross-examined and she is a victim girl, this Court finds that the learned trial Judge has rightly dismissed the petition. This Court finds no reason to take a different view of the matter.

8.In this view of the matter, this Criminal Original Petition is dismissed. Accordingly, the order of Special Court for POCSO Act Sessions Court, Cuddalore made in Crl.M.P.No.352 of 2021 in Spl.S.C.No.26 of 2021 dated 23.03.2021 is confirmed.

05.01.2023

Index : Yes / No
Speaking / Non Speaking order
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To

1. The Inspector of Police
Cuddalore Harbour Police Station
Cuddalore, Crime No.138 of 2020.
2. The Special Court for POCSO Act
Sessions Court, Cuddalore
3. The Public Prosecutor
High Court, Madras.



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G.CHANDRASEKHARAN,J.

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