



Criminal Original Petition No.20231 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.20231 of 2023

Naresh @ Kamalesh
S/o.Varadhan

...Petitioner

Vs

The State represented by
The Inspector of Police,
AWPS, Kondalampatty.
Crime No.1 of 2021

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to set aside the order in CrI.M.P.No.344 of 2022 in Spl.S.C.No.75 of 2021 dated 20.06.2023 passed by learned Sessions Judge, Principal POCSO Court, Salem and allow recall of PW-1.

For Petitioner : Ms.S.Valarmathi

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the petition filed u/s.311 Cr.P.C. in CrI.M.P.No.344 of 2022 in Spl.S.C.No.75 of 2021, insofar as recalling PW-2 for cross-examination, by order dated 20.06.2023.

2. Heard Ms.S.Valarmathi, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. The petitioner is facing trial before the Court below for offences u/s.363, 366, 343, 346 IPC and Section 5(l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. PW-1 to PW-3 were examined in chief on the side of prosecution on 10.03.2022 and these witnesses were not cross-examined on the side of the petitioner. Hence, a petition came to be filed u/s.311 Cr.P.C. to recall PW-1 to PW-3 for cross-examination. The Court below, by order dated 20.06.2023, allowed the petition in part and permitted recall of PW-1 and PW-3 (parents of PW-2) for cross-



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examination. However, the petition was dismissed insofar PW-2 (victim girl) is concerned. Aggrieved by the same, the present petition has been filed before this Court.

4. This Court carefully went through the Section 164 Cr.P.C. statement that was recorded from the victim girl on 02.02.2021 and also the stand taken by the victim girl during chief-examination on 10.03.2022. It is also brought to the notice of this Court that the victim girl is now more than 18 years. Considering the facts and circumstances and also the previous relationship between the parties, this Court is inclined to give an opportunity to the petitioner to recall PW-2 for cross-examination. It is brought to the notice of this Court that PW-1 and PW-3 were recalled and they were also cross-examined on 23.08.2023. The case is now posted on 14.09.2023 for examination of LW-21 to LW-23.

5. In the light of the above discussion, the order passed by the Court



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below in CrI.M.P.No.344 of 2022 in Spl.S.C.No.75 of 2021, dated 20.06.2023, dismissing the petition insofar as PW-2 is concerned, is hereby set aside. The Court below is directed to recall PW-2 and the cross-examination on the side of the petitioner shall be completed on the same day when PW-2 appears before the Court. If, for any reason, the petitioner fails to cross-examine PW-2 on the date of appearance, the petitioner will lose his right to recall PW-2 in future.

In the result, this Criminal Original Petition is allowed with the above direction.

04.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

- 1.The Sessions Judge,
Principal POCSO Court,
Salem.
- 2.The Inspector of Police,
AWPS, Kondalampatty.
Crime No.1 of 2021
- 3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J



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