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CrI.O.P.No.21034 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.21034 of 2023

David
S/o.Samuvel

... Petitioner

Vs.

State represented by
Inspector of Police,
Selvapuram Police Station,
Coimbatore District.
Crime No.11 of 2019

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records, set aside the order in CrI.M.P.No.619 of 2023 in Spl.C.C.No.80 of 2021, dated 10.07.2023 by Sessions Judge, Special Court for exclusive trial of cases under the POCSO Act, Coimbatore.

For Petitioner : Mr.R.Ganesh

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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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. to recall PW-1, PW-2 and PW-3 for further cross-examination and PW-4 and PW-5 for cross-examination.

2. Heard Mr.R.Ganesh, 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.376(3), 506(i) IPC and sections 5(m),(n) r/w 6, 9(m),(n) r/w 10, r/w 18 of POCSO Act. The prosecution had examined five witnesses in this case and at that stage, the petition came to be filed by the petitioner for recalling PW-1, PW-2 and PW-3 for further cross-examination and PW-4 and PW-5 for cross-examination.

4. The Court below, on considering the nature of allegation that has been made against the petitioner and also of the fact that the petitioner



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had already elaborately cross-examined PW-1, PW-2 and PW-3, came to the conclusion that there is no need to recall PW-1, PW-2 and PW-3 for further cross-examination. The reasoning given by the Court below does not suffer from any illegality or infirmity and it does not require the interference of this Court. The Court below has permitted recall of PW-4 and PW-5 for cross-examination and thereby, partly allowed the petition filed by the petitioner. The said decision rendered by the Court below is hereby sustained.

5. The Court below had directed the petitioner to pay cost of a sum of Rs.1,000/- to PW-4 and PW-5.

6. Learned counsel for petitioner submitted that the petitioner is being led by a Legal Aid Counsel and the petitioner is not in a position to pay the cost.

7. In view of the same, this Court directs the Court below to recall PW-4 and PW-5 without payment of any cost. The Court below can proceed further to fix a date for recalling PW-4 and PW-5 and the cross-



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examination of both witnesses shall be completed on the same day of their appearance. If, for any reason, these witnesses are not cross-examined on the date of their appearance, the petitioner will loose his right to recall these witnesses in future.

8. There shall be a direction to the Sessions Judge, Special Court for exclusive trial of cases under the POCSO Act, Coimbatore, to dispose of Spl.C.C.No.80 of 2021 within a period of three (3) months from the date of receipt of a copy of this order.

This Criminal Original Petition is disposed of in the above terms.

19.09.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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WEB COPY To

- 1.The Sessions Judge,
Special Court for exclusive trial of cases under the POCSO Act,
Coimbatore.
- 2.The Inspector of Police,
Selvapuram Police Station,
Coimbatore District.
Crime No.11 of 2019
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



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N.ANAND VENKATESH, J.

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