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Crl.O.P.No.20528 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.20528 of 2023

P.Manikandan

.. Petitioner

Vs.

State Rep.by
The Inspector of Police,
CBI, SCB, Chennai
RC.1(S)/2019

..Respondent

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to set aside the impugned order dated 23.08.2023 passed by the learned Special Court for the Trial of Cases under POCSO Act, Tiruvannamalai in Crl.M.P.No.1744 of 2023 in Special S.C.No.42 of 2021 and consequently direct to allow the petition to recall the witness PW.13 named Yogesh filed by me under Section 311 of Cr.P.C., in Crl.M.P.No.1744 of 2023 in Special S.C.No.42 of 2021.

For Petitioner : Mr.S.Shankar

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (CBI)



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examined in this case for the second time on 30.09.2022, on the same day, he was cross examined. After completion of examining the prosecution witnesses, case was posted for questioning the accused under Section 313 of Cr.P.C., regarding incriminating material against him. Thereafter, the present petition filed to recall PW.13. The trial Court after considering the facts and circumstances dismissed the petition for the following reason:

The petition to recall PW.13 filed after completion of the proceedings under Section 313 Cr.P.C., when the matter was listed for furnishing list of defence witnesses. The reason for further examination of PW.13 not been spelt out in the application. There is a direction from the Hon'ble High Court to complete the trial within one month from the date of order (04.07.2023). This application has been taken out by the accused, who is aware of the time frame fixed by the Court and expiry of time frame fixed, with an intention to delay the completion of trial.

4. The trial Court has taken note of the fact that PW.13 been examined on 30.09.2022 to depose about the incident which took place 10



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years ago. Presently he is 16 years old. After one year of completing the cross examination of this witness, the present petition is filed without assigning any satisfactory reason to recall him.

5. The learned counsel for the petitioner submitted that the testimony of PW.13 earlier in S.C.No.102 of 2015 and the testimony after *de nova* investigation in Spl.S.C.No.42 of 2021, bristles with contradiction and same was not elucidated in the cross examination of PW.13 and therefore, for unearthing the truth, recalling of this witness is necessary. Further, submit that, though this Court in its order dated 04.07.2023 dismissed the petition, filed by the accused to quash the final report which was taken on file in Spl.S.C.No.42 of 2021, on the ground that the *de nova* investigation by CBI is not prohibited under Section 300 of Cr.P.C. Against the order, the accused has preferred S.L.P., and pending before the Hon'ble Supreme Court, therefore time limit of 30 days fixed by the Court in that order to complete the trial which is under challenge before the Hon'ble Supreme Court cannot be a valid reason for declining the petitioner/accused exercising his right to recall the witness under Section 311 of Cr.P.C.



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6. This Court, after perusing the records and hearing the learned Special Public Prosecutor for CBI, finds that the petition to recall minor witness after one year of his examination is bereft of reasoning. Minor witness cannot be harassed under the garb of exercising the right of defence. The provisions of Witness Protection Act squarely applies more so, when the offence is committed under the POCSO Act and the witness being a child, the plea to recall P.W.13 is only to harass the witness. Therefore, this Court finds no merit, hence this Criminal Original Petition is dismissed.

14.09.2023

Internet : Yes/No
Index : Yes/No
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- 1.The Special Court for the Trial of Cases under POCSO Act, Tiruvannamalai
- 2.The Inspector of Police,
CBI, SCB, Chennai.
- 3.The Special Pubic Prosecutor (CBI),
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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