



Crl.O.P.No.21165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.9.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.21165 of 2023

Duraipandi

... Petitioner

Vs.

State represented by
Inspector of Police,
Chetpet Police Station,
Thiruvannamalai District.
Crime No.154/2022

... Respondent

PRAYER : Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to set aside the order passed in Crl.M.P.No.1440/2023 on the file of Special Court for Exclusive Trial of cases, under POCSO Act, Thiruvannamalai District in Crl.M.P.No.1440/2023 dated 21.07.2023.

For Petitioner : Mr.R.Balakrishnan

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



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ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.PC to recall PW1 to 6 for cross examination.

2. The petitioner has been arrayed as A1 and he along with A2 are facing trial before the Court below for alleged offence under Section 7 r/w 8 and 9 of the POCSO Act and Section 75 of the Juvenile Justice Act.

3. The prosecution examined PW1 to 3 on 15.02.2023. Both the accused persons did not cross examine these witnesses. PW1 to 3 are the child witnesses, who are the victims in this case. Similarly, PW4 to 6 were examined in chief by the Court below on 16.06.2023 and these witnesses were also not cross examined. Hence, application was filed to recall PW1 to 6 for cross examination and this application came to be



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dismissed by the Court below by an order dated 21.07.2023. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4. Heard Mr.R.Balakrishnan, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondents.

5. On carefully going through the order passed by the Court below, it is seen that PW1 to PW3 were examined in chief on 15.02.2023. Both the accused persons did not cross examine these witnesses. A2 filed an application to recall PW1 to 3 for cross examination and this application was allowed. The matter came up for hearing on 31.03.2023 and the date was fixed for the cross examination of PW1 to PW3 on 13.04.2023. When the matter came up for hearing on 13.04.2023, the Court informed the petitioner (A1) that he can also file an application for cross examination of PW1 to PW3 and that the same will be allowed and he will be permitted to cross examine those witnesses. For some strange reason, the petitioner and his counsel did



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not react to this request made by the Trial Court. Once again, on 31.05.2023, PW1 to PW3 were present before the Court for cross examination by A2. Even on that day, the Trial Court was virtually pleading with the petitioner(A1) to file an application for recall and cross examination of PW1 to PW3. The Court below was trying its best to give an opportunity to the petitioner to cross examine PW1 to 3 at least on three occasions. Curiously, neither the petitioner nor his counsel took any steps to file an application. As a result, PW1 to PW3 were cross examined only on the side of A2. The petitioner side also did not cross examine PW4 to 6. In the meantime, the counsel was changed and the new counsel filed an application to recall PW1 to 6 for cross examination.

6. In the considered view of this Court, PW1 to PW3 are the victims, who are aged about 15 years. The child witnesses cannot be called to the Court again and again in view of bar under Section 33 (5) of the POCSO Act. The petition was given a sufficiently long rope and



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the petitioner failed to utilize the same. The Trial Court was virtually pleading with the petitioner to cross examine PW1 to 3 by filing an appropriate application and it fell in the deaf ears. Therefore, it is too late in the day for the petitioner to seek for recalling PW1 to 3 for cross examination and the reasoning given by the Court below while dismissing the application with respect to PW1 to 3, does not suffer from any illegality or infirmity and it does not warrant the interference of this Court. Insofar as PW4 to PW6 are concerned, there is absolutely no discussion in the order as to why these witnesses were not allowed to be recalled for cross examination. Considering the seriousness of the offence, this Court is inclined to give one last opportunity to the petitioner to recall PW4 to 6 for cross examination.

7. In the light of the above discussion, this Criminal Original petition is partly allowed and the order passed by the Court below in Crl MP No.1440 of 2023 dated 21.07.2023, is partly set-aside insofar as rejecting the application for recall and cross examination of PW4 to PW6. The Court below shall fix a date for the appearance of PW4 to 6



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and cross examination on the side of the petitioner must be completed on the same date of their appearance. If for any reason, the petitioner fails to cross examine PW4 to 6 on the date of their appearance, the petitioner will lose the right to recall these witnesses in future.

14.09.2023

Index : Yes/No
Speaking Order : Yes/No
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To

1. The Special Court for Exclusive Trial of cases, under POCSO Act,
Thiruvannamalai District
2. Inspector of Police,
Chetpet Police Station,
Thiruvannamalai District.
3. The Public Prosecutor, High Court, Madras.



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