



Crl.O.P.No.26554 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.26554 of 2022

and

Crl.M.P.No.16347 of 2022

Govindaraj

...Petitioner

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Pennagaram,
Crime No.6 of 2021.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to admit the petition and set-aside the order dated 21.09.2022 passed in Crl.M.P.No.760 of 2022 in Spl.S.C.No.29 of 2022 on the file of the Fast Track Mahila Court, Dharmapuri and thus render justice.

For Petitioner : Mr.J.Pradeep

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Criminal side)



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ORDER

This Criminal Original Petition is filed to admit the petition and set-aside the Order dated 21.09.2022 passed in Crl.M.P.No.760 of 2022 in Spl.S.C.No.29 of 2022 on the file of the Fast Track Mahila Court, Dharmapuri.

2. It is the submission of learned counsel for the petitioner that, petitioner filed petition under Section 311 of Cr.P.C in Crl.M.P.No.760 of 2022 for recalling of PW1 to PW3, for the purpose of further cross examination. The reason is that, some of the questions have been omitted to be asked to these witnesses, therefore, petition was filed for recalling PW1 to PW3. The learned Sessions Judge without considering the petitioner's valid claim, dismissed the petition. Challenging the said order of dismissal, the present petition is filed.

3. In response, learned Government Advocate (Criminal side) submitted that, PW1 to PW3 had been examined in chief followed by cross examination. The reason stated for recalling of witnesses that, certain important questions have been omitted to be asked cannot be entertained. Learned Sessions Judge, considering all these aspects and rightly dismissed the petition.

4. Considered the submissions and perused the records.



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5. The Order of the learned Sessions Judge reads that, out of 20 witnesses cited by the prosecution, PW1 to PW16 were examined. The case is pending for LW20, the Inspector of Police who conducted the investigation and laid charge sheet. At this juncture, a petition for recalling of PW1 to PW3 has been filed.

6. The Order reads that PW1 to PW3 were already cross examined. PW2, victim girl has a certain degree of mental disability. She was examined with the assistance of the Special Instructor. There is no disclosure in the petition about the important points which were omitted, during the course of cross examination of PW1 to PW3. There is a Bar under Section 33(5) of the POCSO Act to repeatedly call victim girl for the purpose of examination. On all these reasons, learned Sessions Judge, dismissed the petition.

7. This Court, on going through reasoned order passed by the learned Sessions Judge finds that, there is no reason to interfere with the Order dated 21.09.2022 passed in Crl.M.P.No.760 of 2022 in Spl.S.C.No.29 of 2022 on the file of the Fast Track Mahila Court, Dharmapuri. The reasons are that PW1 to PW3 had already been cross examined; no specific details are given



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as to the points which are omitted to be asked to these witnesses; PW2 is mentally disabled girl and there is a bar under Section 33(5) of the POCSO Act to repeatedly call the victim girl to give evidence. There is also a possibility of witnesses giving different version due to lapse of time or confusion in the minds of the witnesses due to repeated examination, which ultimately denies a fair trial. Therefore, this Court is not inclined to interfere with the Order dated 21.09.2022 passed in Crl.M.P.No.760 of 2022 in Spl.S.C.No.29 of 2022 passed by the Fast Track Mahila Court, Dharmapuri.

8. Accordingly, the Order dated 21.09.2022 passed in Crl.M.P.No.760 of 2022 in Spl.S.C.No.29 of 2022 passed by the Fast Track Mahila Court, Dharmapuri is confirmed and this Criminal Original Petition is dismissed, with a direction to the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri to dispose the case within a period of two months from the date of receipt of a copy of this Order. Consequently, the connected Miscellaneous Petition is closed.

28.03.2023

Internet :Yes
Index :Yes/No
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1.The Fast Track Mahila Court,
Dharmapuri.

2.The Inspector of Police,
All Women Police Station,
Pennagaram,

3.The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN, J.



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