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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.22049 of 2023

S.Yesuraja

...Petitioner

Vs.

State rep.by
The Inspector of Police,
Selvapuram Police Station,
Coimbatore District.

...Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to set aside the order passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore in Crl.M.P.No.676 of 2023 in Spl.S.C.No.79 of 2021 dated 10.7.2023.

For Petitioner

: Mr.R.Ganesh

For Respondent

: Mr.A.Damodaran
Additional Public Prosecutor

ORDER

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.

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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 section 5(l), 5(m), 5(n) r/w 6 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 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



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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-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



N.ANAND VENKATESH,J

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Spl.C.C.No.79 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.

26.09.2023

Speaking Order : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Sessions Court, Principal Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore.
- 2.The Inspector of Police, Selvapuram Police Station, Coimbatore District.
- 3.The Public Prosecutor, High Court, Madras.

CrI.O.P.No.22049 of 2023