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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.23284 of 2023

Vigneshwaran @ Vickey

... Petitioner

Vs.

State by
The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records in SC.No.28 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Thiruvallur and set aside the order dated 29.08.2023 passed in Crl.MP.No.1665 of 2023.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : Mr.S.Udaya Kumar,



Government Advocate (Crl.Side)

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ORDER

The petition filed by the accused challenges the order of the Trial Court allowing the petition filed by the prosecution under Section 311 of Cr.P.C., to recall a minor boy aged 14, who alleged to have sustained injury in the incident. The Trial Court has allowed the application and being aggrieved the present petition has been filed by the accused.

2. The learned counsel for the petitioner submitted that the boy was not shown as a listed witness, and no previous statement under Section 161 of Cr.P.C was recorded. Therefore, introducing the witness will amount to filling up the lacuna, and the possibility of tutoring the witness is more.

3. This Court could have agreed with the submissions made by the learned counsel for the petitioner, but for the reason that the minor boy who is now sought to be examined as an additional witness is a victim of the crime. On the date of occurrence, he was five years old, and his mother was done to death. The doctor who treated the minor boy has already been



shown as a listed witness, and it is now stated that the Doctor has been examined as one of the prosecution witnesses. The Investigation Officer, in the course of investigation, considering the age of the boy, did not show him as a listed witness. The incident took place on 12.01.2015 when the boy was five years old. The Trial Court, which commenced in the year 2018, has been prolonged till now and the boy, who is the injured victim in the crime, has attained the age of 14. Therefore, in the interest of justice he must be examined as a witness. The Trial Court also felt that it is an appropriate case where the power under 311 of Cr.P.C should be exercised to arrive at a just decision in the case.

4. In the said facts and circumstances, this Court finds no reason to interfere with the decision of the Trial Court, which examined the minor boy whose name was found in the FIR and spoken by other witnesses and the Doctor who treated him. It is needless to say that the Trial Court will take the necessary precautions as mandated by the Appellate Court and High Court while recording the statement of the minor witness and following the guidelines for appreciating the evidence of a minor witness.



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WEB COPY 5. With the above observation, this Criminal Original Petition is dismissed.

13.10.2023

Index : Yes/No

drl

To

1.The Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court), Thiruvallur

2.The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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