



CrI.O.P.No.24509 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.24509 of 2023
& CrI.M.P.No.17046 of 2023

Rajkumar,

... Petitioner/Accused

/versus/

The State Represented by,
The Inspector of Police,
All Women Police Station,
Polur in Crime No.13 of 2008

...Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
pleaded to set aside the order passed in CrI.M.P.No.58 of 2023 dated 30.08.2023,
in S.C.No.124 of 2009, on the file of Sessions Judge, Magalir Neethimandran,
(Fast Track Mahila Court), Tiruvannamalai.

For Petitioner : Ms.S.Ambigapathi.

For Respondent : Mr.S.Udaya Kumar, Govt Advocate (CrI.Side).



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ORDER

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The petition is to recall the multiple witnesses P.W.1 to P.W.3, P.W.9, P.W.11 to P.W.14, P.W.16, P.W.19 and P.W.20. After examining 20 witnesses on the side of the prosecution, the petition to recall the above witnesses filed under Section 311 of Cr.P.C.

2. The trial Court, after going through the records, conduct of the petitioners and the nature of the offence charged, relying upon the Hon'ble Supreme Court judgment in *Vinod Kumar -vs State of Punjab reported in 2015 (1) MLJ (Criminal) 288*, had dismissed the petition.

3. The Learned Counsel appearing for the petitioner submitted that, there was change of counsel and also the case which was taken on file in the year 2009 by the Sessions Court, Tiruvannamalai, after been committed, could not progress further due to demise of the Counsel and therefore, the valuable right of cross examining these witnesses cannot be deprived. Further, it is stated that while these witnesses were examined in Chief, the petitioner was employed at Chennai and due to his illness, he was not able to attend the Court. The reason stated



though may appear very impressive and makes the Court to draw discretionary power of allowing the application, the detailed order of the trial Court show that, it is a case of kidnap and rape. P.W.1 to P.W.3 were examined in Chief on 03.12.2013 and thereafter, other witnesses were examined. Meanwhile, the case was also transferred from Principal Sessions Court, Thiruvannamalai to Assistant Sessions Court, Cheyyar and thereafter, after constituting Mahila Court at Thiruvannamalai District, the case was transferred to Fast Track, Mahila Court, Thiruvannamalai. For all these years, the petitioner had taken any care for speedy disposal and allowed the prosecution to examine 20 witnesses. Thereafter, present petition is filed on 02.12.2022, when the matter was posted for examination of defence witness.

4. The Court record indicates that, on 03.12.2012, 9 witnesses were summoned and examined. The petitioner has cross examined all other witnesses except P.W.1 to P.W.3 and P.W.9. P.W.11 to P.W.16 were summoned on 04.12.2012 but for the reason best known, the petitioner has not cross examined them. Subsequently, on 11.12.2020, P.W.17 to P.W.20 were summoned, again the petitioner failed to cross examine them. The petition to recall includes the victim



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girl and other relatives. P.W.2 victim girl was about 12 years old at the time of occurrence and she had mounted the witness box and deposed in the year 2012, to recollect and narrate an incident which took place in the year 2008, recalling the witnesses, who have already attended the Court in reverence to the summons, again and again, after lapse of several years is nothing but harassment to the witnesses who assist the Court to arrive at truth. The inordinate delay in filing the petition and the nature of the offence makes the Court to confirm the order of the trial Court, since the right of the victim and witnesses are also equally to be protected.

5. Hence, this ***Criminal Original Petition is dismissed.***

Consequently, connected Miscellaneous Petition is closed.

30.10.2023

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm



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Copy to:-

1. The Sessions Judge, Magalir Neethimandran, (Fast Track Mahila Court), Tiruvannamalai.
2. The Inspector of Police, All Women Police Station, Polur.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.Jayachandran, J.

bsm

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