



WEB COPY

Crl.O.P.No.27147 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.27147 of 2023
and Crl. M.P. No.18843 of 2023

Sankar Rao

... Petitioner

-VS-

The State,
Rep. by The Inspector of Police,
Kalpakkam Police Station,
Chengalpattu District.
(Crime No.190 of 2017)

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order dated 19.10.2023 made in Crl.M.P.No.819 of 2023 in Spl.S.C.No.110 of 2019, on the file of Sessions Judge, Special Court for Exclusive Trial of Case under POCSO Act, Chengalpattu.

For Petitioner : Mr.J.Jayan

For Respondent :Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

This petition is filed by the accused being aggrieved by the dismissal of

his petition to recall P.W.4 & P.W.5 for cross examining them.

<https://www.mhc.tn.gov.in/judis>



2. According to the learned counsel for the petitioner, P.W.4 & P.W.5 were summoned to give evidence and they were present on 19.06.2023, on that day their chief examination was recorded. Since the learned counsel for the petitioner was engaged in other Court, he was not able to cross examine these two witnesses on the same day. When an Application was filed subsequently for recalling of these two witnesses for cross examination, the trial Court dismissed the Application, hence aggrieved by the dismissal order, the present petition is filed under Section 482 of Cr.P.C.

2. Perusal of the impugned order indicates that it is a case for offence under POCSO Act. The accused is a Teacher, victim is a Student, the two witnesses P.W.4 and P.W.5 are his colleagues. When P.W.4 & P.W.5 were present, the accused was absent, filed a petition under Section 311 Cr.P.C and the same was allowed. The evidence of P.W.4 & P.W.5 was closed on the same day by recording that though opportunity was given to cross examine these witnesses, the learned counsel for the petitioner/accused did not avail the opportunity.

3. The case is of the year 2019 and the accused was not present on the date when P.W.4 & P.W.5 were examined in chief. The dismissal of this petition to recall these two witnesses cannot be faulted but at the same time, considering the nature of the offence and the chief examination of these two witnesses, this



Court is of the opinion that opportunity must be given to the petitioner herein to cross examine these two witnesses who have deposed, incriminating the petitioner herein.

4. While allowing this Application, this Court also recorded the word of caution to the trial Court that any attempt, by the witness to subvert, the due process of law may be taken note of, while considering the merits of the case. Accordingly, this petition is **allowed**, on payment of witness batta of Rs.1000/-. These two witnesses may be summoned for cross examination and on the date of their appearance, the petitioner shall cross examine them and there shall be no further adjournments for the said purpose. Consequently, connected Miscellaneous Petition is closed.

01.12.2023

Internet : Yes/No
Index : Yes/No
rkp

To
1.The Sessions Judge,
Special Court for Exclusive Trial of Case
under POCSO Act, Chengalpattu.

2.The Inspector of Police,
Kalpakkam Police Station,
Chengalpattu District.

3.The Public Prosecutor,
Madras High Court, Madras.



WEB COPY

Crl.O.P.No.27147 of 2



Dr.G.JAYACHANDRAN, J.

rkp

Crl.O.P.No.27147 of 2023
and Crl.M.P. No.18843 of 2023

01.12.2023