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Crl.O.P.(MD)No.4454 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.4454 of 2023

Johnraj

... Petitioner/Accused

Vs.

State through the Inspector of Police,
AWPS Thiruchendur,
Tuticorin District.
(Crime No.14 of 2017)

... Respondent/Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the orders passed in Cr.M.P.No.1370 of 2022 in Spl. S.C.No.134 of 2019 dated 25.11.2022 on the file of the learned Special Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin.

For petitioner : Mr.Ka.Raamakrishnan

For Respondent : Mr.S.Manikandan
Government Advocate (Crl. Side)

ORDER

This criminal original petition has been filed to to set aside the orders passed in Cr.M.P.No.1370 of 2022 in Spl. S.C.No.134 of 2019 dated 25.11.2022 on the file of the learned Special Judge, Special Court



for Exclusive Trial of Cases under POCSO Act, Tuticorin.

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2.The case of the prosecution in brief:

The petitioner is facing charges under Section 5(m) r/w 6 of POCSO Act, 2012 and under Section 506(i) of IPC. During the pendency of the trial process, he filed petition under Section 311 Cr.P.C. to recall the witnesses namely PW1 and PW2 for cross examination, that was dismissed by the trial court holding that there is a bar under Section 33(5) of POCSO Act. But no repeated application were filed by this petitioner. So the above said bar will be attracted only if there is an attempt on the part of the petitioner repeatedly calling the victim for examination.

3.The learned counsel for the petitioner would rely upon the judgment of the Kerala High Court in the case of *Manu Dev Vs. xxxx and others*, reported in *CDJ 2023 Ket HC 149*, for the purpose of argument that in the interest of the fair trial, if the situation demands, there can be no bar for recalling the witnesses. No doubt, that there is no absolute bar. The conduct of the accused is a deciding factor. Now, the order of the trial Court shows that PW1 and PW2 were examined and cross examined on 08.11.2019. Now this petition has been filed on the



ground that some important points were omitted during the course of cross examination by the Advocate, who was appearing.

4.To ascertain the above said fact, the deposition copies of PW1 and PW2 were ordered to be produced. In pursuance of the above said directions, deposition copies are also produced, wherein, we find that PW1 was examined in chief and cross on 08.11.2019 itself. She was also cross examined in full and PW2 also. PW3 was not cross examined by the accused. Now, the above said petition has been filed only to recall PW1 and PW2 for further cross examination. PW4 was also examined in chief and cross. The above said petition has been filed after a long gap of three years. So what sort of advantage the petitioner is going to gain by subjecting the above said witnesses PW1 and PW2 for further cross examination may not be the appropriate point for this Court to make a comment.

5.No doubt that the trial Court has considered the delay point and as well as the guideline given by the higher courts by making the trial process. But however, considering the fact that the petitioner is facing a serious charges, in the interest of fair trial, I am of the considered view that one more opportunity may be given to the petitioner to cross



Crl.O.P.(MD)No.4454 of 2023

examine the PW1 and PW2 in further with certain conditions.

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1) The petitioner must deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) as cost to each of the witnesses PW1 & PW2 to the credit of Spl.S.C.No. 134 of 2019 before the trial Court, within a period of one week from the date of receipt of a copy of this order.

2.On such deposit, the trial Court is directed to recall the witnesses P.W.1 and P.W.2 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witnesses without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

6.With the above said directions, this criminal original petition is **allowed.**

16.03.2023

Index : Yes/No
Internet : Yes/No
TM



CrI.O.P.(MD)No.4454 of 2023

To

- 1.The Special Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin.
- 2.The Inspector of Police,
AWPS Thiruchendur,
Tuticorin District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.4454 of 2023

G.ILANGOVA. J.

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Crl.O.P.(MD)No.4454 of 2023

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