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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/03/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.5079 of 2023
and
Cr1.MP(MD)No.4491 of 2023

Ranjith : Petitioner/A1

Vs.

State represented by
The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District,
In Crime No.674 of 2017 : Respondent/Complainant

PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the order, dated 03/03/2023 in Cr.M.P No.165 of 2023 in Special SC No.23 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur and set aside the same and pass such further or other orders.

For Petitioner : Mr.G.Karnan

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking to set aside the order, dated 03/03/2023 passed in Cr.M.P No.165 of 2023 in Special SC No.23 of 2019 by the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

2.The facts in brief:-

The petitioner is facing the charges for the offences punishable under section 366 IPC and section 5(1) r/w 6 of POCSO Act. During the course of trial process, the prosecution filed a petition under section 217 of the Criminal Procedure Code to recall PW20, the Inspector of Police, for further examination on the ground that the charge was altered, on 17/02/2023.

3.That was resisted by the accused stating that no reason has been mentioned in the recall application for exercising the power.

4.The trial court, after considering the rival submissions, allowed the petition, upon which, this criminal original petition has been filed.



5. Even at the time of argument, this court wanted to know against which order, the petitioner filed the petition.

6. The learned counsel appearing for the petitioner would submit that against the order of allowing Cr.M.P No.165 of 2023, this petition has been filed.

7. The trial court has stated that after completing the prosecution side witness, the charge was altered, on 17/02/2023. So naturally, the prosecution as well as the accused will be permitted to examine new or recall and re-examine the witnesses, who have been already examined. Only on that score, the trial court permitted the prosecution to recall PW20.

8. In the above said circumstances, there is no necessity for the prosecution to file an application under section 217 Cr.P.C to recall the witnesses. Because originally, the charge was framed on 06/01/2020. It was altered as per the order, dated 17/02/2023. The power was exercised by the trial court under section 216 of the Criminal Procedure Code. The above said exercise of the



9. Section 217 Cr.P.C reads as follows:-

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material".



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10. So reading of the above said provision makes it clear that when the charges are altered or added, after completing the witnesses of the trial court, both sides will be permitted to recall or reexamine the witnesses or further witnesses also. How the above said power has been wrongly exercised by the trial court is not either stated or explained by the petitioner at the time of argument. The above said power has been rightly exercised by the trial court in the facts and circumstances of the case.

11. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

27/03/2023

Index: Yes/No
Internet: Yes/No

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To,

- 1.The Principal Special Court for
Exclusive Trial of cases under
POCSO Act, Thanjavur.
- 2.The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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