



Crl.O.P.(MD)No.5077 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.5077 of 2023

and

CRL MP (MD) No. 4489 of 2023

T.Suresh

...Petitioner/Petitioner/Accused

Vs.

1.The State Represented by,
The Inspector of Police,
All Women Police Station,
Dindigul,
Dindigul District.
Crime No.1/2022

...Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records of the order dated 04.11.2022 in Crl.M.P.No.1649 of 2022 in Spl.S.C.No.25 of 2022 passed by the Learned Mahila Fast Track Court, Dindigul and set-aside the same in respect of PW2.

For Petitioner : Mr.Balaji.S

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



Crl.O.P.(MD)No.5077 of 2023

ORDER

WEB COPY

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the entire records of the order dated 04.11.2022 in Crl.M.P.No. 1649 of 2022 in Spl.S.C.No.25 of 2022 passed by the Learned Mahila Fast Track Court, Dindigul and set-aside the same in respect of PW2.

2. The learned Additional Public Prosecutor would submit that the petitioner is facing charges under Sections 9(m), 10 of POCSO Act and Section 506(i) of IPC before the trial Court. When the trial is started, on the side of the prosecution, three witnesses have been examined on 08.09.2022. Out of the three witnesses, none was cross examined on that date. On the next hearing date itself (i.e) 16.09.2022, the petitioner has filed a petition to recall P.W.1 to 3, that was partly allowed by the trial Court, permitting the petitioner to recall P.W.1 and 3. So far as P.W.2 is concerned, considering the fact that the victim girl is below 12 years and because of the bar under section 35 of POCSO Act, the above said petition was dismissed.



Crl.O.P.(MD)No.5077 of 2023

3. The learned counsel for the petitioner would submit that no doubt that there is lapse on the part of the petitioner to cross examine P.W.2 on the date of chief examination.

4. According to the learned counsel for the petitioner, reason for non cross examining of P.W.2 is non availability of 164 Cr.P.C. Statement. But that cannot be a ground for non cross examining the witness on the same date itself.

5. But however, considering the fact that petitioner is facing serious charges, without cross examination of the witness, the fair justice may not be possible. On the sole ground, one more opportunity is given to the petitioner on stringent condition. The petitioner is directed to pay Rs.5,000/- (Five Thousand Only) as cost before the trial Court. On such payment, the trial Court may fix the date for cross examine the witnesses. On that date the petitioner must cross examine the witnesses without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.



Crl.O.P.(MD)No.5077 of 2023

6. With the above said direction, this petition stands allowed.

Consequently, the connected Miscellaneous Petition is closed.

17.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Indu

To

- 1.The Mahila Fast Track Court,
Dindigul.
- 2.The Inspector of Police,
All Women Police Station,
Dindigul,
Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J.

Indu



WEB COPY



Crl.O.P.(MD)No.5077 of 2023

Order made in
Crl.O.P.(MD)No.5077 of 2023

Dated: 17.03.2023