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Crl.O.P.(MD)No.12676 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	01.09.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.12676 of 2023
and Crl.M.P.(MD) No.9949 of 2023

Vetrivel

... Petitioner/
Accused

Vs.

1. The Inspector of Police,
Oddanchathiram Police Station,
Dindigul District.

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to impugned order dated 09.02.2023 made in Crl.M.P.No.249 of 2023 in Spl.S.C.No. 98 of 2022, on the file of Fast Track Mahila Court, Dindigul and set aside the same as illegal as against the order not permitting to recall the PW3 alone and consequently allow the petitioner to recall PW3 cross examination.



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For Petitioner : Mr.A.Arul Jenifer

For Respondent : Mr.SS.Madhavan
Government Advocate (Crl. Side)

ORDER

The petition is filed seeking to set aside the orders passed by the Fast Track Mahila Court, Dindigul District in Crl.M.P.No.249 of 2023 in Spl.S.C.No.98 of 2022, wherein the petition was partly allowed permitting the petitioner to cross-examine P.Ws.1 and 2 but dismissed so far as P.W.3 is concerned.

2. The facts in brief are that Spl.S.C.No.98 of 2022 is registered against the petitioner/accused for the offences punishable under Sections 363 and 366 of IPC and Section 5(1) r/w. 6 of POCSO Act 2012. During the course of trial P.Ws.1 to 6 were cross-examined. The petitioner has filed application, under Section 311 of Cr.P.C., in Crl.M.P.No.249 of 2023 to recall P.Ws.1 to 3 for the purpose of cross-examination and the same was allowed insofar as P.Ws.1 and 2 are concerned but dismissed in respect of P.W.3. Aggrieved by the same this petition is filed.

3. Heard both sides and perused the records.



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4. Learned counsel for the petitioner submitted that cross-examination of P.W.3 is material in order to prove innocence of petitioner/accused and thereby, sought for setting aside the orders passed by the Fast Track Mahila Court, Dindigul District and respondent will be ready to cross-examine P.W.3 on any date fixed by the Court. Learned Government Advocate submitted that in spite of giving opportunity, the petitioner could not cross-examine P.W.3.

5. P.W.3 is uncle of the victim girl. According to the chief examination of P.W.3 on 10.04.2022 at about 9.00 p.m., mother of victim/P.W.2 called P.W.3 and enquired him whether P.W.1 victim was in his house. As P.W.1 was not in his house, P.W.3 also searched for the victim and could not find her. It is also deposed by P.W.3 that on 22.04.2022, he went to Bangalore along with respondent police and found P.W.1 along with accused and brought them back to Ottanchathiram police station.



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6. The evidence of P.W.3 is incriminating against the petitioner/accused and it is observed in the trial Court order that though sufficient time was given, the petitioner/accused has not cross-examined P.W.3. If P.W.3 is not cross-examined by petitioner/accused, his evidence, will go unchallenged and thereby, there is every possibility of miscarriage of justice and prejudice will be caused to the petitioner/accused. Principles of natural justice also requires that the accused shall be permitted to cross-examine all the witnesses before Court analyzes and decides as to whether the charges levelled against the petitioner/accused are proved. Further, the trial Court having permitted to cross-examine P.Ws.1 and 2 should have permitted to cross-examine P.W.3 also.

7. Considering the above, this Criminal Original Petition is allowed and the order dated 09.02.2023 passed in Crl.M.P.No.249 of 2023 in Spl.C.C.No.98/2022 is quashed insofar as not permitting the petitioner to cross-examine P.W.3. The trial Court is directed to issue

summons to P.W.3 for cross-examination by fixing specific date on



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which the petitioner/accused shall cross-examine P.W.3 without fail.

Consequently, connected miscellaneous petition is closed.

26.09.2023

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

PKN/mvs.

To

1. The Inspector of Police,
Oddanchathiram Police Station,
Dindigul District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.12676 of 2023

Dated: 26.09.2023