



CrI.O.P.(MD)No.12858 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.12858 of 2023

and

CrI.M.P.(MD) No.10080 of 2023

S.Karuppaiya @ Kumaresan

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Manapparai,
Trichy District.
Cr.No.7/2019

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order of dismissal insofar as recalling the prosecution witness of P.W.1 by order dated 08.05.2023 made in Cr.M.P.No.501 of 2023 in Spl.S.C.No.49 of 2019 on the file of the learned Sessions Judge, Mahila Court, for Exclusive Trial of Cases under POCSO Act, Thiruchirappalli by allowing this petition.

For Petitioner : Mr.K.Manoharan

For Respondent : Mr.E.Antony Shaya Prabahar
Additional Public Prosecutor



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ORDER

The unsuccessful petitioner/accused in Spl.S.C.No.49 of 2019, who lost in Cr.M.P.No.501 of 2023, filed under Section 311 of Cr.P.C. seeking for recall of P.W.1 has filed this Criminal Original Petition to intervene and set aside the orders passed by the learned Sessions Judge, by way of an interim order dated 08.05.2023.

2. The petitioner was initially charged for the offences under Section 376, 294(b), 323 and 506(i) of IPC in Crime No.7 of 2019. Subsequently, the sections of law were altered to Sections 294(b), 323, 506(i) of IPC and Sections 5(1), 5(n), 6(1) of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act"). On completion of investigation, charge sheet has also filed for the same offence, and taken on file for the same offence by the same learned Special Judge.

3. After filing of charges, prosecution has produced 12 witnesses. All of them were examined in cross also by the counsel on record for the petitioner/accused. The petitioner/accused has filed Cr.M.P.No.501 of



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2023, seeking for recall of P.W.1 for further cross-examination. On hearing both sides, the trial Court has dismissed the same by way of interim order.

4. Learned counsel appearing for the petitioner/accused has submitted that the trial Court has committed error in not permitting the petitioner to recall P.W.1 for further cross-examination and that the petitioner should have given one more opportunity and on account of not giving such opportunity, serious prejudice caused to the petitioner. It is also submitted that as per Section 29 of POCSO Act, the presumption is being raised against the petitioner/accused, thereby, he as to rebut the presumption, otherwise, case may likely to go against him.

5. Learned Additional Public Prosecutor, on the other hand, submits that the petitioner/accused has given sufficient opportunity and has cross-examined the witness and therefore, the trial Court has rightly declined to recall P.W.1.



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6. The petitioner has filed Cr.M.P.No.501 of 2023, seeking for recall of P.W.1 precisely after P.W.1 was examined in chief. Subsequent to cross-examination of P.W.1, the prosecution has produced almost all the witnesses, viz., P.W.2 to P.W.12 and all of them were also conveniently cross-examined by the petitioner/accused. On going through the petition filed before the trial Court under Section 311 of Cr.P.C., the petitioner/accused has mentioned that some questions about the documents were missed in the cross-examination and thereby, re-cross-examination is necessary. The petitioner has not mentioned what are the questions that were not put to the witness and also not clear as to which documents he was talking about. Once the petitioner has cross-examined P.W.1, and if he is seeking for re-cross-examination, he is expected to make out clearly as to on what aspect and on which document he proposed to cross-examine the witness, because, that will give an idea to the Court to understand whether the questions which are proposed to ask to show relevant in order to consider the charges levelled against the petitioner/accused.



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7. Further, it is mentioned in the order of the learned Special Judge that the petitioner in the trial Court has submitted before the trial Court that after going through the deposition of the evidence of P.W.1, the petitioner has realized that some of the questions to be put to P.W.1 were missing. This aspect also is not convincing. One year after examination of P.W.1 in cross, this petition is filed. The petitioner/accused has failed to explain as to why he has to wait for such a long period for filing of application for recalling of P.W.1.

8. Recalling of a witness can certainly permitted under Section 311 of Cr.P.C. at any time of trial. However, the petitioner is charged for the offences under the provisions of POCSO Act. Section 33(5) of POCSO Act mandates that the victim shall not be called again and again to testify before the Court. It is not the case where the victim was not at all cross-examined. Once P.W.1 was cross-examined in all aspects even according to the petitioner/accused, subsequently, after one year he realized that certain aspects have been missing in the cross-examination of P.W.1., but that will not satisfy the requirements of Section 33(5) of POCSO Act. The petitioner is expected to make out a case that further cross-



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examination is required for just decision.

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9. Considering the circumstances as discussed above, this Court finds that the petitioner/accused has failed to make out any genuine ground which can be considered for recalling of P.W.1. The reasons explained by the petitioner/accused for recalling of P.W.1 are not satisfactory. The trial Court, therefore, rightly dismissed the application and hence, there is no reason to interfere with the findings of the said proceedings. This petition stands dismissed. Consequently, connected miscellaneous petition is closed.

25.07.2023

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



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To

- 1.The Inspector of Police,
All Women Police Station,
Manapparai,
Trichy District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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