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CrI.O.P.(MD)No.18153 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.12.2023

CORAM:

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

CrI.O.P.(MD) No.18153 of 2023

Rajakumaran

... Petitioner/Accused

Vs.

State through
The Inspector of Police,
Alwarthirunagari Police Station,
Tuticorin District.
(Crime No 17/2017)

... Respondent/Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order passed in CrI.M.P No.1336 of 2022 in Spl.S.C.No.156/2019, dated 2/11/2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin, Tuticorin District.

For Petitioner : Mr.KA.Raama Krishnan

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (CrI.side)



ORDER

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This Criminal Original Petition is filed to set aside the order passed in Crl.M.P No.1336 of 2022 in Spl.S.C.No.156/2019, dated 2/11/2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Tuticorin, Tuticorin District.

2. The petitioner is facing charges under Sections 366 of IPC and U/s.5(1) r/w. Section 6 of POCSO Act, before the trial Court. Now, the trial is under way in Spl.S.C.No.156/2019. Before the trial Court, P.W.1 and P.W.2 were examined on 06.09.2019. But, they were not cross examined by the petitioner at that time of chief examination. Later, they were recalled and cross examined. Another application was filed by the petitioner seeking recall of P.W.1 and P.W.2, for further cross examination. But, it came to be dismissed, stating that already they were cross examined and full opportunity is given to the petitioner and repeated calling of victim girl is not permissible under law, by relying upon section 33(5) of POCSO Act. Apart from that citation of Hon'ble Supreme Court in *Vinodh Kumar Vs. State of Punjab (2015 (1) M.L.J. Crl.288)* is also cited in the order in Crl.M.P No.1336 of 2022 in Spl.S.C.No.156/2019.



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3. Now the grievance of the petitioner is that, it is purely love affair between the petitioner and the victim girl. In view of the above said affairs, some letters were written by the victim girl. But those documents were not put to P.W.2, at that time of cross examination. With reference to the above said documents only, they want to cross examine the witnesses.

4. The petitioner ought to have utilized the same at the earliest opportunity. But however, considering the fact that now the victim is aged about 23, the bar will not be applicable.

5. Considering the grievance of the petitioner, one more opportunity is given to the petitioner to cross examine P.W.1 in further, with reference to the documents only, 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 P.W.1. On that date the petitioner must cross examine the P.W.1 without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.

6. In respect of P.W.2, the learned counsel for the petitioner is not



pressing this petition.

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

08.12.2023

Index : Yes/No
Internet : Yes/No
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To

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



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G.ILANGOVAN. J.

Indu

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