



CrI.O.P.(MD)No.18458 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.12.2023**

CORAM:

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

CrI.O.P.(MD) No.18458 of 2023

and

CrI.M.P.(MD) No.14579 of 2023

Eswaran

... Petitioner/Petitioner/
Accused

Vs.

State through
The Inspector of Police,
All Women Police Station,
Nagercoil,
In Crime No 07 of 2020.

...Respondent/Respondent/
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records related to the Impugned Order in Cr.M.P No. 234 of 2022 in Special Sessions Case No.50 of 2020 on the file of the Learned Special court for Exclusive trial of cases under POCSO Act, Nagercoil, Kanniyakumari District, dated 20.06.2022 and set aside the same.

For Petitioner : Mr.S.Karthikeyan

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



ORDER

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This Criminal Original Petition is filed to call for the records related to the Impugned Order in Cr.M.P No. 234 of 2022 in Special Sessions Case No.50 of 2020 on the file of the learned Special court for Exclusive trial of cases under POCSO Act, Nagercoil, Kanniyakumari District, dated 20.06.2022 and set aside the same.

2. By the order dated 13.10.2023, a report was called for from the learned Special Court for Exclusive trial of cases under POCSO Act, Nagercoil, Kanniyakumari District. The report reveals that P.W.1 to P.W.4 were examined in chief on 09.12.2021 and P.W.5 to P.W.7 were examined on 29.11.2022. On behalf of the accused Eswaran, Mr.Subhakaravel was appointed as Advocate. But, he failed to cross examine the witnesses on the date of chief examination. After changing his counsel, the accused filed petition to recall P.W.1 to P.W.4. After the new counsel was engaged by the accused, P.W.5 to P.W.7 were cross examined. All of the witnesses were cross examined, except P.W.1 to P.W.4.

3. The learned Government Advocate (CrI.Side) would submit that age of the victim girl is only 16. Repeatedly calling the victim for examination is not permissible under the POCSO Act.



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4. Considering the submissions made by the both side counsels and also considering the fact that the earlier counsel, who was engaged by the petitioner did not conduct the case in a proper manner, for that, the petitioner should not be penalised. Only on the sole ground, this petition is allowed to recall P.W.1 to P.W.4 on payment of cost of Rs.5,000/- each. Let the cost be paid to the above said witnesses within a week, either directly or to be deposited in the trial Court. On such payment, the trial Court shall fix the dates for recall P.W.1 to P.W.4 in a scheduled manner for further cross examination. The petitioner must cross examine the P.W. 1 to P.W.4 on that dates, without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.

5. With the above said conditions, the orders of dismissal in Cr.M.P(MD) No.234 of 2022 in Spl.S.C.No.50 of 2020 on the file of the learned Special Court for Exclusive trial of Cases under POCSO Act, Nagercoil, Kanniyakumari District, is set aside and this Criminal Original petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

01.12.2023

Index : Yes/No
Internet : Yes/No
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CrI.O.P.(MD)No.18458 of 2023

G.ILANGOVAN. J.

Indu

To

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

CrI.O.P.(MD) No.18458 of 2023

01.12.2023