



Crl.O.P.(MD).No.20321 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.20321 of 2023
and Crl.M.P.(MD).No.15854 of 2023

Sivamuthiah

... Petitioner

Vs.

The Inspector of Police,
Kovilpatti All Women Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.6/2021)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the order dated 09.08.2023 made in Crl.M.P No.447 of 2023 on the file of the learned Special court for Exclusive trial of cases under POCSO Act, Thoothukudi, and set aside the same and allow the above criminal original petition.

For Petitioner : Mr.C.Jeganathan

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



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ORDER

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This petition has been filed to set aside the order dated 09.08.2023 made in Crl M.P No. 447 of 2023 on the file of the learned Special court for Exclusive trial of cases under POCSO Act, Thoothukudi.

2.Challenging the order that was passed by the learned Special Court for Exclusive trial of cases under POCSO Act, Thoothukudi, in Crl.M.P.No.447 of 2023, dated 09.08.2023, this petition has been filed. The petitioner is facing charges under Sections 452 and 506(i) of IPC and Section 3(a) r/w 4 and 7 r/w 8 and 18 of POCSO Act, before the trial Court.

3.The learned Government Advocate (Crl. Side) would submit that the trial commenced. On the side of the prosecution, so far 17 witnesses were examined.

4.The petitioner filed petition in Crl.M.P.No.447 of 2023 before the trial Court under Section 311 Cr.P.C., seeking to recall the witnesses namely P.W.1 to P.W.3, it came to be dismissed by the trial Court on



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09.08.2023 stating that sufficient opportunity was already given for cross examination of the witnesses P.W.1 to P.W.3. That was sufficiently utilized by him in cross examining the witness in an elaborate manner. Apart from that, it is also stated that since the victim is a child, the petitioner repeatedly called her for giving evidence is not permissible as per Section 33(5) of POCSO Act. The other ground is belated one.

5.The victim is going to complete 18 years at the end of December, 2023. To elicit some other particulars with regard to the marriage proposal, he wants P.W.1 to 3 to be recalled.

6.Accordingly, this Court passed the following Order:

1. The order, dated 09.08.2023, passed in Crl.M.P.No.447 of 2023 on the file of the Special Court for Exclusive trial of cases under POCSO Act, Thoothukudi, is hereby set aside.
2. The petitioner must deposit a sum of Rs.5,000/- (Rupees five Thousand only) as cost to each of the witnesses to the credit of Spl.S.C.No.81 of 2021 before the trial Court, within a period of one week from the date of receipt of a copy of this order.



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3. On such deposit, the trial Court is directed to recall the witnesses namely PW1 to PW3 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witness without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

7. With the above said directions, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

22.11.2023

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



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To

- 1.The learned Special court
for Exclusive trial of cases under POCSO Act,
Thoothukudi.
- 2.The Inspector of Police,
Kovilpatti All Women Police Station,
Kovilpatti,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN,J.

VSG

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