



CrI.O.P.(MD) No.22286 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2023

CORAM:

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

CrI.O.P.(MD)No.22286 of 2023
CrI.M.P.(MD).No.17441 of 2023

V.Dhasan

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Kanniyakumari, Kanniyakumari District.
(Crime No.26 of 2019)

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order, dated 22.08.2023, in CrI.M.P.No.913/2023 in Spl.SC.No.2/2020 passed by the Special Court for the exclusive trial of cases under POCSO Act, Nagercoil and to recall the witness PW 05 for cross examination.

For Petitioner	:Mr.G.Anto Prince
For Respondent	:Mr.R.M.Anbunithi Additional Public Prosecutor



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ORDER

This criminal original petition has been filed to set aside the order, dated 22.08.2023, passed in Crl.M.P.No.913 of 2023 in Spl.S.C.No.2 of 2020 by the learned Sessions Judge, Special Court for the Exclusive Trial of Cases under POCSO Act, Nagercoil and to recall the witness PW 5 for cross examination.

2.The petitioner is an accused before the trial Court, facing charges under Section 9(1), 9(m) and 10 of Protection of Child from Sexual Offences Act, 2012. He has filed a petition before the trial Court seeking permission to recall the witness namely PW5 for the purpose of cross examination. Since the same was dismissed, the petitioner has come forward before this Court. It is submitted that PW5 was not cross examined by the petitioner on the date of the chief examination i.e., on 01.08.2023. The reason for non cross examination of the witness is that his counsel on record before the trial Court has not appeared on that date due to demise of an Association member.

3.The learned Additional Public Prosecutor would submit that now the case is posted for pronouncing judgment. It is also submitted that PW5 is only



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mahazar witness. Even though it has been stated that he is mahazar witness and not material witness, the counsel for the petitioner submitted that he is the father of the victim girl. He must be cross examined with reference to some other facts.

4.In view of the submissions made by the learned counsel for the petitioner, this Court is inclined to give one more opportunity to the petitioner to recall PW5.

5.On that sole ground, the impugned order, dated 22.08.2023, passed in Crl.M.P.No.913 of 2023 in Spl.SC.No.2 of 2020, by the learned Sessions Judge, Special Court for the Exclusive Trial of Cases under POCSO Act, Nagercoil, is hereby set aside and this criminal original petition is **allowed** with following stringent conditions.

1) The petitioner must deposit a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the witness namely PW5 to the credit of Spl.S.C.No.2 of 2020, before the trial Court, within a period of fifteen days from the date of receipt of a copy of this order.

2) On such deposit, the trial Court is directed to recall the



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witness P.W.5 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the above said witness without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

Consequently, connected miscellaneous petition is closed.

11.12.2023

Internet : Yes / No
Index : Yes / No
TM

To

- 1.The Sessions Judge,
Special Court for the exclusive trial of cases under POCSO Act, Nagercoil.
- 2.The Inspector of Police,
All Women Police Station,
Kanniyakumari, Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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