



Crl.O.P.(MD).No.22601 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED:15.12.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.22601 of 2023
and Crl.M.P(MD)No.17677 of 2023

Patturaja

... Petitioner

Vs

The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
Crime No.6 of 2022.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed by Special Court for POCSO Act Cases, Tirunelveli in Crl.MP.No.2205 of 2023, dated 1.8.2023 in Spl.CC.No.121 of 2022 and allow this Petition.

For Petitioner : Mr.C.Susi Kumar

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition filed to set aside the order passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli in Crl.MP.No.2205 of 2023, dated 1.8.2023 in Spl.CC.No.121 of 2022.

2.The petitioner is facing charges under sections 4, 6 of Protection of Children from Sexual Offences Act, 2012 and Section 307 of IPC before the Special Court for POCSO Act Cases, Tirunelveli in Spl.C.C.No.121 of 2022.

3.In this case, PW1 was examined on 20.06.2023 and on that day of chief examination, the learned counsel for the petitioner was not present and in his place another Advocate filed a change of vakalat and he has not come forward to cross examine PW1. Thereafter, the petitioner has filed a petition in Crl.M.P.No.2205 of 2023 seeking to recall PW1, which came to be dismissed by the trial Court stating that PW1 during her chief examination stated that she should not be called to



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the Court frequently. Only on that ground, the said petition was dismissed. Challenging the same, the present petition has been filed.

4.Though it is stated by the learned counsel for the petitioner that on the date of chief examination of PW1, the counsel on record was not present and some other Advocate, who was present before the Court was not ready to cross examine PW1, it is not correct. No doubt, it is a lapse on the part of the learned counsel for the petitioner by not cross examining the PW1 on the date of chief examination itself. However, the petitioner should not be penalised for that. The petitioner has got every right to substantiate his defence. For the purpose of proving his innocence only he filed the petition. The inconvenience caused to the witness can be compensated by way of cost.

5.Considering the facts and circumstances of the case and the reasons stated in the petition, this Court is inclined to set aside the impugned order and one more opportunity is given to the petitioner to recall the evidence of PW1 on payment of cost of Rs.10,000/- (Rupees ten thousand only) to PW1, within a week, from the date fixed by the



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trial Court. On that date, the petitioner is directed to examine the said witness, failing which, the right of the petitioner shall be forfeited.

6. Accordingly, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

15.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PNM

To

1. The Sessions Judge,
Special Court for POCSO Act Cases, Tirunelveli

2. The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
Crime No.6 of 2022.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

PNM

ORDER IN
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