



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.1395 of 2024

Vimalraj

...Petitioner

Vs.

The State rep. by
The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu District.
(Crime No.3 of 2021)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 08.12.2023 in CrI.M.P.No.1353 of 2023 in Spl.S.C.No.75 of 2021 passed by learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu, insofar it relates to dismissal towards PW1 and allow the above recall petition recalling the PW1.

For Petitioner : Mr.G.MageshKumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 311 of Cr.P.C., in CrI.M.P.No.1353 of 2023 by an order dated 08.12.2023, insofar as PW1 is concerned.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3.The petitioner is facing trial before the Court below for offence under Sections 363, 365, 366, 343, 376(2)(n) of IPC r/w Sections 4(1), 6(1) of POCSO Act, 2012. The victim girl and her parents were examined as PW1 to PW3. They were examined in chief by the prosecution and none of these witnesses were cross-examined on the side of the petitioner.

4.The petitioner filed an application in CrI.M.P.No.1353 of 2023 under Section 311 of Cr.P.C., to recall PW1 to PW3 for cross-examination.

5.The Court below on considering the facts and circumstances of the case and the plea taken by the petitioner, dismissed the application insofar PW1 is



concerned and allowed the application insofar as PW2 and PW3 on payment of cost. This petition has been filed by the petitioner aggrieved by the dismissal of the application insofar as PW1 is concerned.

6.This Court had the opportunity of going through the statement that was recorded from the victim girl under Section 164 of Cr.P.C., and also the chief examination of the victim girl. Considering the nature of relationship between the petitioner and the victim girl, this Court deems it fit to give an opportunity to the petitioner to cross-examine the victim girl. This is more so due to the fact that the petitioner is facing charges for serious offences and there is also a reverse burden cast upon the petitioner under Section 29 and 30 of the POCSO Act.

7.It was brought to the notice of this Court by the learned counsel appearing on either side that the case is posted on 14.02.2024 for cross-examination of PW2 and PW3. On the same day, PW1 can also be recalled and she can also be cross-examined on the same day.

8.The Court below had imposed cost of a sum of Rs.500 for recalling PW2 and PW3. The same condition can be imposed against the petitioner for recalling PW1 also.



9. In the result, the order passed by the Court below in Crl.M.P.No.1353 of 2023 dated 08.12.2023, insofar as dismissing the application for recalling PW1 is concerned, is hereby set aside. PW1 to PW3 shall be recalled and they shall be cross-examined on 14.02.2024. The petitioner shall also pay a cost of Rs.500 to each of the witnesses. It is made clear that the cross-examination shall be completed on the same day of the appearance of the witnesses. If for any reasons, the petitioner fails to cross-examine the witnesses on the date of their appearance, the petitioner will lose his right to recall the witnesses in future.

10. In the result, this criminal original petition is disposed of in the above terms.

29.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

Note: Issue Order Copy on 31.01.2024

To

1. The Sessions Judge, Mahila Court,
Kancheepuram District at Chengalpattu.



2. The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu District.

3. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

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