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Criminal Original Petition No.1835 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.1835 of 2024

and

Crl.M.P.No.1306 of 2024

Vasanthakumar
S/o.Katturaja

... Petitioner

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Kondalampatti, Salem.
Crime No.4 of 2021

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 06.01.2024 in Crl.M.P.No.1135 of 2023 in Spl.S.C.No.135 of 2021 on the file of Special Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, 2012, Salem.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This petition has been filed challenging the order passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, 2012, Salem, in CrI.M.P.No.1135 of 2023 in Spl.S.C.No.135 of 2021, dated 06.01.2024 dismissing the application filed by the petitioner to recall PW-1 to PW-10 for cross-examination.

2. The petitioner is facing trial before the Court below for offences u/s.363, 366, 506(ii) IPC and Section 5(l),(n),(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act, 2012. The prosecution examined PW-1 to PW-10. None of these witnesses were cross-examined. Hence, the petitioner filed an application to recall all these witnesses for cross-examination. The petitioner took a stand that he was represented by a legal aid counsel and there was difference of opinion between the petitioner and the counsel and none of the witnesses were cross-examined. However, the Court below found that the petitioner in fact was represented by a private counsel and not by a legal aid counsel and they were present when the witnesses were examined and in spite of the same, they did not cross-examine any of the witnesses. Hence, the Court below,



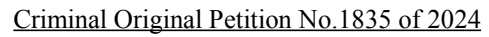
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by order dated 06.01.2024, dismissed the application. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.C.Prabakaran, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

4. In the considered view of this Court, the petitioner is facing very serious charges before the Court below. The stand taken by the petitioner as if he was represented by a legal aid counsel and that there was some misunderstanding with the said counsel as a result of which the witnesses were not cross-examined, is falsified by the finding rendered by the Court below to the effect that the petitioner was in fact represented by a private counsel and they were very much present at the time of examination of witnesses and they failed to cross-examine the witnesses.

5. Insofar as PW-2 is concerned, she is the victim girl and on going through the statement recorded u/s.164 Cr.P.C. and also the statement made by her when she deposed as PW-2 and other materials available on



7. This Court is inclined to consider recalling PW-2, PW-3, PW-4, PW-8, PW-9 and PW-10 to enable the petitioner to cross-examine these witnesses. Such an opportunity is given to the petitioner since the petitioner is facing serious charges as stated supra. However, the petitioner will have to pay cost of Rs.500/- [Rupees Five Hundred only] to each of these witnesses.



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8. In the light of the above discussion, the order passed by the Court below in Crl.M.P.No.1135 of 2023 in Spl.S.C.No.135 of 2021, dated 06.01.2024, is partly modified and there shall be a direction to the Court below to recall PW-2, PW-3, PW-4, PW-8, PW-9 and PW-10 and give an opportunity to the petitioner to cross-examine these witnesses. The petitioner is directed to pay cost of Rs.500/- [Rupees Five Hundred only] to each of the witnesses. It is made clear that the cross-examination on the side of the petitioner will be completed on the same day when the witnesses appear before the Court. If, for any reason, the petitioner fails to cross-examine any of the witnesses on the date of their appearance, the petitioner will loose his right to recall the witnesses.

This Criminal Original Petition is disposed of in the above terms.
Consequently, connected miscellaneous petition is closed.

05.02.2024

Speaking Order/Non-speaking Order
Index : Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH, J.

gm

To

- 1.The Special Sessions Judge,
Special Court for Exclusive Trial of cases
under POCSO Act, 2012,
Salem.
- 2.The Inspector of Police,
All Women Police Station,
Kondalampatti, Salem.
Crime No.4 of 2021
- 3.The Public Prosecutor,
High Court, Madras.

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