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CrI.O.P.No.4283 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.4283 of 2024

Sathya

... Petitioner

Vs.

The Inspector of Police,
AWPS Mamallapuram,
Kancheepuram.

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to set aside the order dated 14.12.2023 passed in CrI.M.P.No.1214 of 2023 in Spl.S.C.No.33 of 2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Case under POCSO Court, Chengalpattu and allow the recall petition with the condition to complete the cross examination of witnesses within stipulated time fixed by this Hon'ble Court.

For Petitioner : Mr.S.N.Subramani
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 in CrI.M.P.No.1214 of 2023 under Section 311 of Cr.P.C. to recall P.W.1



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to P.W.10 for cross examination.

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2.The petitioner is facing trial before the Court below for offence under Sections 4, 6 of POCSO Act and Section 506(2) of IPC. The case of the prosecution is that the petitioner had sexually abused P.W.2 who is the victim girl and P.W.3 who is the victim boy. The prosecution had examined P.W.1 to 10 and for reasons best known to the petitioner, none of these witnesses were cross examined. Infact, when P.W.1 and P.W.2 were examined in chief, the petitioner had sought for deferring the cross examination by filing application under Section 231 (2) of Cr.P.C. and the same was dismissed on the same day. Such dismissal was not put to challenge.

3.The case was at the stage of examination of further witnesses on the side of the prosecution. At that stage, the present application came to be filed to recall P.W.1 to P.W.10 for cross examination. The Court below on finding that no valid reasons have been assigned by the petitioner for not cross examining the witnesses when they were examined in chief, dismissed the application. Aggrieved by the same, the present petition has been filed before this Court.



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4. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor appearing on behalf of the respondent.

5. In the considered view of this Court, recalling witnesses cannot be done in a routine manner and the accused person must give valid reasons as to why he was not able to cross examine the witnesses on the day when they were examined in chief. It is more so in cases of sexual abuse involving minors. Section 33(5) of the POCSO Act was brought in only for this purpose and the Legislature wanted to ensure that the child does not undergo the mental turmoil once again by recollecting the incident.

6. In the instant case, the petitioner was present with the counsel whenever the prosecution witnesses were examined in chief. However, they did not care to cross examine any of the witnesses. Casually an application came to be filed on 01.09.2023 under Section 311 of Cr.P.C. to recall P.W.1 to P.W.10 for cross examination. On going through the application it is seen that the only reason assigned was that a new counsel has been engaged and therefore, the prosecution witnesses must be recalled for cross examination. The law is now too well settled that engaging a new counsel is not a ground for



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recalling the witnesses.

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7.During the last hearing, this Court directed the learned counsel for the petitioner to identify some important witnesses so that this Court can consider recalling those witnesses for cross examination. This is in view of the fact that the petitioner is facing trial for serious charges.

8.When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that the petitioner wants to recall P.W.1 to P.W.5 and also P.W.8 and P.W.10.

9.In so far as P.W.2 and P.W.3 are concerned, they are the victim girl and boy. They were examined in chief on 03.05.2023 and for some reason, the petitioner did not cross examine those witnesses. In the light of the bar contained Section 33(5) of the POCSO Act and also considering the age of the victim children and the nature of the evidence that they have tendered before the Court below by explaining the abuse that they underwent, this Court is not inclined to recall these two witnesses since these children cannot made to undergo the mental turmoil by recollecting such a horrendous incident. Hence,



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there is no question of recalling P.W.2 and P.W.3 for cross examination.

10.Considering the facts and circumstances of the case, this Court is inclined to recall P.W.1, P.W.4, P.W.5, P.W.8 and P.W.10 for cross examination. To that extent, the order passed by the Court below is interfered.

11.In the result, the order passed by the Court below in Crl.M.P.No.1214 of 2023 in Spl.S.C.No.33 of 2022 dated 14.12.2023 is partly set aside and this criminal original petition is partly allowed. The Court below is directed to recall P.W.1, P.W.4, P.W.5, P.W.8 and P.W.10 for cross examination. It is made clear that these witnesses shall be cross examined on the date of their appearance and the cross examination shall be completed on the same day. If for any reason, the petitioner fails to cross examine these witnesses on the date of their appearance, the petitioner will lose his right to recall the witnesses. That apart, all the other prosecution witnesses who are examined in chief, shall be cross examined on the same day. The Court below shall complete the proceedings in Spl.S.C.No.33 of 2022 within a period of three months from the date of receipt of copy of this



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order.

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N.ANAND VENKATESH,J.

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12.This criminal original petition is partly allowed.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Case under POCSO Court,
Chengalpattu.
- 2.The Inspector of Police,
AWPS Mamallapuram,
Kancheepuram.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

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