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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.6899 of 2023

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..Petitioner/Petitioner/Accused

.Vs.

State rep.by the
Inspector of Police
All Women Police Station
Gudiyatham, Vellore.

(Crime No.7 of 2014)

.. Respondent /Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Sessions Judge (Special Court for Exclusive trial of cases under POCSO Act), Vellore in Crl.MP.No.916 of 2022 in Spl.SC.No.114 of 2018 dated 16.12.2022.

For Petitioner : Mr.D.Rajagopal

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

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 Cr.PC, to recall PW.1 and PW.2 for further cross examination.



2. When the matter came up for hearing on 3.4.2023, this Court passed the following order:

This petition is filed to set aside the order passed by the learned Sessions Judge (Special Court for Exclusive Trial of Cases under POCSO Act), Vellore in Crl.M.P.No.916 of 2022 in Spl. S.C.No.114 of 2018 dated 16.12.2022.

2. The main grievance of the petitioner is that, when PW2 was cross - examined, certain important and necessary questions have been asked. But the trial Judge prevented him from asking those questions. Unless, these questions are permitted to be asked, fair trial cannot be guaranteed. That apart, PW2 had abused counsel for the accused with vulgar words. That was not questioned by the learned Judge. It is the case involving offence under Section Kidnapping and rape. If the questions which are essential and necessary are omitted, it would lead to miscarriage of Justice. The complaint was sent to the Registrar General of this Court on 21.03.2022 narrating the incidents that had happened in Court on 14.03.2023.

3. In the light of the submission made by the learned counsel for the petitioner, this Court calls for a report from the learned Sessions Judge (Special Court for Exclusive trial of cases under POCSO Act), Vellore on the allegations made in 311 Cr.P.C Petition filed in Crl.M.P.No.916 of 2022, within a period of two weeks from the date of receipt of copy of the order.

1. Post the matter after two weeks.



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3. Pursuant to the above order, a report has been sent by the Sessions Judge incharge of the Special Court, dated 13.04.2023. The learned Judge has stated that she had intervened during the cross examination of PW.1 whenever she found that the questions that were put to PW.1 were irrelevant, abusive etc. That apart, the learned Judge has completely denied the fact that the learned counsel for the accused was abused with vulgar words by PW.2. The trial Judge has taken a stand that the allegations made on the side of the petitioner is unfounded.

4. Heard Mr.D.Rajagopal, learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.side) for the respondent.

5. The petitioner is facing trial before the Court below for offence under Sections 376, 501(i) IPC altered to Sections 363, 366, 417, 506(ii) IPC and Section 2(1)(d) 4 of the POCSO Act. PW.1 and PW.2 were examined in chief and they were also cross examined by the petitioner. It is brought to the notice of this Court during the pendency of this petition, some more witnesses were examined on the side of the prosecution and the case is now at the stage of examination of the investigation officer. None of those witnesses were cross examined on the side of the petitioner.

6. On considering the facts and circumstances of the case and the report that has been submitted by the trial Judge, this Court is not inclined to interfere with the



order insofar as recalling PW.1 for further cross examination. However, this Court is inclined to give one opportunity to the petitioner to further cross examine PW.2.

That apart, the petitioner shall also file an application for recalling the other witnesses for cross examination. Those witnesses shall be cross examined on the same day they appear in Court. This direction is given in view of the fact that the petitioner is facing very serious charges and hence, she must be given an opportunity to effectively defend herself.

7.In the result, the order passed by the Court below in CrI.MP.No.916 of 2022, dated 16.12.2022, is partly set aside to the extent indicated supra. The Court below shall proceed further with the case in the light of the observations made by this Court and the proceedings in Spl.C.C.No.114 of 2018, shall be concluded within a period of **three months** from the date of receipt of copy of the order.

8.This criminal original petition is allowed in the above terms.

11.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

1. Inspector of Police
All Women Police Station
Gudiyatham, Vellore.

2. Sessions Judge
(Special Court for
Exclusive trial of cases under POCSO Act),
Vellore.



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N. ANAND VENKATESH., J

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