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Criminal Original Petition No.5325 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.5325 of 2024

Pattan Muthu,
S/o.Patchai Muthu

... Petitioner

Vs.

State rep by Inspector of Police,
W 19, All Women Police Station,
Adayar, Chennai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 17.11.2023 in CrI.M.P.No.1038/2023 in Spl.S.C.No.22/2022 passed by the Special Court for Exclusive Trial of Case under POCSO Act, Chengalpet and direct the learned Judge to allow the 311 petition and permit to do cross-examination of the PW1 to PW6.

For Petitioner : Ms.L.Poompavai

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed challenging the order passed by the Court below in CrI.M.P.No.1038/2023 in Spl.S.C.No.22/2022, dated 17.11.2023, dismissing the application filed u/s.311 Cr.P.C. to recall PW-1 to PW-6 for cross-examination.

2. Heard Ms.L.Poompavai, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. The petitioner is facing trial before the Court below for offences under Section 9(1)(m) r/w 10 of POSCO Act, 2012 and Section 366 IPC. The prosecution had examined six witnesses and none of these witnesses were cross-examined. When the case was at the stage of examination of other prosecution witnesses, the present application came to be filed u/s.311 Cr.P.C. to recall PW-1 to PW-6 for cross-examination. The Court below dismissed this application by an order dated 17.11.2023 on the ground that the petitioner did not assign any reason as to why the witnesses were not cross-examined in spite of the fact that the petitioner



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as well as the counsel were present before the Court. Aggrieved by the same, the present petition has been filed.

4. In the considered view of this Court, there is absolutely no reason assigned in the petition filed u/s.311 Cr.P.C. as to why PW-1 to PW-6 were not cross-examined. The only reason stated was that there is change in counsel and the new counsel, who entered appearance, wants to examine these witnesses. Engaging a new counsel can never be a ground to recall witnesses and the law on this issue is now too well-settled.

5. Considering the fact that the petitioner is facing a serious charge before the Court below and some opportunity must be given to the petitioner, this Court is inclined to partly modify the order passed by the Court below and permit the petitioner to recall PW-1, PW-3 and PW-4, who are the parents and grandfather of the victim girl. There is no question of recalling the victim girl in this case considering the facts of the case and also considering the bar contained u/s.33(5) of the POCSO Act.



Criminal Original Petition No.5325 of 2024

WEB COPY

6. Learned Additional Public Prosecutor further submitted that the case is now at the stage of examination of LW-11.

7. In the light of the above discussion, the order passed by the Court below in CrI.M.P.No.1038/2023 in Spl.S.C.No.22/2022, dated 17.11.2023 is partly set aside. The Court below shall recall PW-1, PW-3 and PW-4 and fix a date for their cross-examination. On the date of their appearance, these witnesses must be cross-examined and the cross-examination must be completed on the same day. If, for any reason, the petitioner fails to cross-examine the witnesses, he will loose his right to recall these witnesses in future. That apart, the petitioner shall also cross-examine the other prosecution witnesses on the same day they are examined in chief.

This Criminal Original petition is disposed of with the above direction.

06.03.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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WEB COPY

To

- 1.The Special Court for Exclusive Trial of Case
under POCSO Act, Chengalpet.
- 2.The Inspector of Police,
W 19, All Women Police Station,
Adayar, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J.

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