



Crl.O.P.No.6347 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P No.6347 of 2024  
and Crl MP No.4677 of 2024

Vigneshwaran

...Petitioner

Vs.

State Rep. by the  
Inspector of Police,  
A.W.P.S. Perur, Coimbatore

...Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records dated 19.02.2024 in Crl MP No.1562 of 2023 in Spl SC No.82 of 2023 before the Hon'ble Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore and set aside the same.

|                |                       |
|----------------|-----------------------|
| For Petitioner | : Mr.R.Radha Pandian  |
| For Respondent | : Mr.A.Damodaran, APP |



Crl.O.P.No.6347 of 2024

WEB COPY

### ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed in Crl MP No.1562 of 2023 under Section 311 of Cr.PC to recall PW1 for cross examination.

2. Heard Mr.R.Radha Pandian, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The petitioner is undergoing trial before the Court below for offence under Section 3 (A) R/W 4(2) of POCSO Act, 2012 and Section 506(i) of IPC. The prosecution examined the victim child as PW1 and the parents of the victim boy as PW2 and 3. PW1 was examined in chief on the side of the prosecution on 02.11.2023. On



CrI.O.P.No.6347 of 2024

WEB COPY

that day, the child was not cross examined and hence, the evidence of PW1 was closed. Thereafter the case was adjourned to 27.11.2023. The case was thereafter posted on 04.12.2023 and on that day, the parents of the victim child viz., PW2 and 3 were examined in chief. On the same day, the counsel appearing on behalf of the petitioner filed an application under Section 311 of Cr.PC to recall PW1 for cross examination. The Court below has dismissed this application mainly relying upon Section 33(5) of the POCSO Act on the ground that the child cannot be recalled to testify before the Court again and again and under go the mental agony by recalling the incident.

4. On carefully going through the application filed under Section 311 of Cr.PC , the reason that has been assigned by the petitioner for not being able to cross examine PW1 is extracted hereunder :-

*It is most humbly submitted that the defense counsel*



CrI.O.P.No.6347 of 2024

WEB COPY

*appeared on behalf of the petitioner /accused was unable to cross examine the PW1 - victim child as the defence counsel have to take part and perform rites and ceremonies in the condolence of his materna aunty on the date of chief examination recorded by this Hon'ble Court (PW1- Victim child).*

5. The petitioner is facing serious charges and the petitioner is also duty bound to reverse the burden that has been cast upon him under Section 29 and 30 of the POCSO Act. In the instant case, there was a valid reason for the counsel appearing for the petitioner for not cross examining PW1 on the same day. The petitioner has also taken immediate steps to file an application to recall PW1 for cross examination. Therefore, this Court is inclined to give one last opportunity to recall PW1 for cross examination. It is true that Section 33 (5) of POCSO Act imposes a bar in again and again calling the child to depose regarding the incident. However, it



CrI.O.P.No.6347 of 2024

WEB COPY

is not a complete bar to recall the child and in an appropriate case, the child can be recalled for cross examination.

6. This is one such occasion where the learned counsel for the petitioner was not able to be present in the Court since he was attending a funeral. That apart, the application to recall PW1 for cross examination has also been filed immediately. Therefore, this Court is inclined to exercise its jurisdiction under Section 482 of Cr.PC and give an opportunity to the petitioner to cross examine PW1.

7. In the light of the above discussion, the order passed by the Court below in CrI MP No.1562 of 2023 dated 19.02.2024 is hereby set-aside. The Court below is directed to fix a date for recalling PW1 and on the very same day, the Cross examination shall be completed. If for any reason, the petitioner fails to cross examine PW1 on the date of his appearance, the petitioner will lose



Crl.O.P.No.6347 of 2024

his right to recall PW1 in future.

WEB COPY

8. The petitioner has not cross examined PW2 and PW3, who are the parents of PW1, since PW1 was not cross examined. Therefore, the petitioner shall immediately file an application to recall PW2 and 3 and the same shall be allowed and they shall be cross-examined and the cross examination shall be completed on the same day.

9. In the result, this Criminal original petition is allowed with the above directions. Consequently, the connected miscellaneous petition is closed.

15.03.2024

Index : Yes/No  
Internet : Yes/No  
Speaking Order :Yes/No  
rka

Note : Issue order copy on 18.03.2024



WEB COPY



Crl.O.P.No.6347 of 2024

To

1. State Rep. by the  
Inspector of Police,  
A.W.P.S. Perur, Coimbatore
- 2.The Public Prosecutor,  
High Court, Madras.



WEB COPY



Crl.O.P.No.6347 of 2024

N.ANAND VENKATESH,J

rka

Crl.O.P.No.6347 of 2024



WEB COPY



Crl.O.P.No.6347 of 2024

15.03.2024