



WEB COPY



CrI.O.P.No.6703 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P No.6703 of 2024

1. Surya
2. Bharath
3. Muthupandi

...Petitioners

Vs.

State Rep. By its
The Inspector of Police,
W-20, All Women Police station,
Saidapet, Chennai 600 015

...Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set-aside the order dated 29.02.2024 passed in CrI MP No.198 of 2024 in Spl SC No.61 of 2020 on the file of Special Court of exclusive trial of cases under POCSO Act, Chennai.

For Petitioner	: Mr.D.Nandhagopal
For Respondent	: Mr.A.Damodaran, APP

ORDER

This Criminal Original petition has been filed challenging the



Crl.O.P.No.6703 of 2024

order passed by the Court below in Crl MP No.198 of 2024 dated 29.02.2024, dismissing the application filed under Section 311 of Cr.PC to recall PW3 for the purpose of further cross examination/

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The petitioners are facing trial before the Court below for various offence under the POCSO Act. The case of the prosecution is that the petitioners committed sexual assault on the victim PW3, who later identified himself as a Transgender.

4. The prosecution had examined all the witnesses and the petitioners were also questioned under Section 313 of Cr.PC and the defence witnesses were also examined. The case was at the stage of final arguments. At this stage, the present application came to be filed to recall PW3 for further cross-examination.



Crl.O.P.No.6703 of 2024

WEB COPY

5. The main ground on which the application was filed was that the evidence of PW1, PW3, PW11 and DW2 are contradicting each other and the petitioner wanted to establish such contradiction by recalling PW3 for further cross-examination. The Court below has dismissed this application mainly on the ground that PW3 is the victim child and there is a bar under Section 33(5) of the POCSO Act to recall the victim child again and again. The Court below also took into consideration the fact that the victimchild has already started identifying as a transgender and it became very difficult for the police to bring the child even during the first occasion, since the child has now started living in the midst of transgenders.

6. In the considered view of this Court, if there is a contradiction between the evidence tendered by various witnesses, it is a matter to be argued before the Court and it is for the Court to consider the same while appreciating the evidence. Such contradiction in evidence cannot be a ground to recall the witness. PW3 has deposed before the Court and PW3 has already been cross examined on the side of the petitioner.



Crl.O.P.No.6703 of 2024

WEB COPY

If PW3 is contradicting the evidence of other witnesses, it should be pointed out by the petitioners at the time of arguments. This Court does not find any illegality or infirmity in the order passed by the Court below in Crl MP No.198 of 2024 and the same does not require the interference of this Court.

7. In the result, this criminal Original petition is dismissed.

20.03.2024

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

To

1. Special Court of exclusive trial of cases under POCSO Act, Chennai

2. State Rep. By its
The Inspector of Police,
W-20, All Women Police station,
Saidapet, Chennai 600 015

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.6703 of 2024

N.ANAND VENKATESH,J

rka

Crl.O.P.No.6703 of 2024



WEB COPY



CrI.O.P.No.6703 of 2024

20.03.2024