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Crl.OP.No.10741 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.10741 of 2024

Vinayagam @ Vinayagamoorthy

... Petitioner

Vs.

State rep by Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai-600 010.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 01.04.2024 in Crl.MP.No.370 of 2024 in Spl.S.C.No.127 of 2022 and recall the P.W.2 and permit the petitioner to cross examine victim Girl Miss Malini.

For Petitioner : Mr.D.Chandra Sekar

For Respondents : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

ORDER

The petitioner is an accused in Spl.SC.No.127 of 2022 pending on the file of POCSO Court, Chennai for the alleged offences under Sections 342, 354(B), 376AB IPC and Section 5(i)(m) r/w 6 of POCSO Act.



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2. The Criminal Original Petition is filed to re-call P.W.2 who is the victim minor girl. The said petition was filed to elucidate the contradictions between her previous statements before the Court and before the Juvenile Justice Board. The Court below dismissed the petition stated that in the light of prohibition under Sections 33 (5) of the POCSO Act. Also Victim witness cannot be recalled her testimony before the Juvenile Justice Board against the child in conflict with law (CCL) is different and has to be dealt separately. The trial Court has also taken note of the previous statement of the victim child recorded by the Judicial Magistrate under Section 164 of Cr.P.C.

3. Being aggrieved by the said order, the present petition is filed stating that the victim child has to be re-called to elucidate contradictions in her previous statements. It is also alleged that the testimony of the victim child was recorded through video conference and the possibility of tutoring by the respondent police cannot be ruled out.

4. The records reveals that the F.I.R in Cr.No.4 of 2022 was registered by the respondent police on 31.03.2022. The trial completed and posted for arguments. P.W.2, the victim child was examined on



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30.10.2023. The petition to re-call the said witness was filed on

26.03.2024 after the matter is listed for arguments.

5. The trial Court has rightly dismissed the petition stating that the statement of witness recorded in a proceedings pending under Juvenile Justice Board may not have much relevance since that is in connection with different person (a child in conflict with law). The proceedings before the Juvenile Justice Board is based on the separate F.I.R against the child in conflict with law and therefore the statements given before the Juvenile Justice Board may not have any relevance to the case against the petitioner. As far as this petitioner/accused, the victim witness has given statement before Judicial Magistrate which was available for the accused to contradict when the witness was present.

6. In view of the above, this Court finds no justifiable reason to interfere with the order of the trial court which has rightly observed that re-calling the victim child again and again will subject her to trauma. Hence, the Criminal Original petition to re-call is dismissed.

Vv

30.04.2024



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To

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1. Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai-600 010.
2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

Vv

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