



Crl.O.P.No.13065 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.13065 of 2024

and

Crl.M.P.No.7980 of 2024

Nilamangai

... Petitioner

Vs.

1.R.Gnanaprakash

2.State Rep. by

The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai – 600 083.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to allow the above Criminal Original Petition by setting aside the order dated 05.03.2024 passed in Crl.M.P.No.4828 of 2024 in Spl.S.C.No.15 of 2022 on the file of Sessions Judge, Additional Special Court for Exclusive Trial of Cases Under POCSO Act, (Mahalir Neethimandram) Allikulam, Chennai.

For Petitioner : Mr.S.Sriram

For 1st Respondent : Mr.A.V.Arun

For 2nd Respondent : Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side)



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ORDER

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The petitioner herein is an accused for the offence under Section 384, 506(ii) IPC and Section 6 r/w. 5(i) of the POCSO Act, 2012. After examination of eight witnesses on the side of the prosecution he has filed an application to recall the defacto complainant PW1 mother of the minor victim and PW2 minor victim.

2. The trial Court has allowed the application under Section 311

Cr.P.C recording the following reasons:-

5. Considering the above contention it is noted that the petitioner is charged for serious offences. P.W.1 is the mother of the victim child. P.W.2 is the victim child. At present P.W.2 has complete 18 years of age. Both witnesses are not cross examined on the side of the accused. No inconvenience will be caused in recalling the witness. They are the key witnesses. Deciding the case without testing the veracity of said witnesses by way of cross-examination may cause miscarriage of justice. Also it may not be proper to decide the case without giving an opportunity for cross examining the key witnessed. Moreover, the cross-examination of P.Ws.1 and 2 is necessary to enable this Court to arrive a just decision. Hence, considering the reason given on the side of the



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petitioner/ accused that due to illness of his Advocate the witness could not been cross examined and in the interest of justice this court is inclined to allow this petition, however on suitable cost.

3. The *defacto* complainant being aggrieved by the order passed by the trial Court recalling the witnesses is before this Court challenging the said order.

4. The learned counsel appearing for the petitioner states that the witnesses PW1 and PW2 were examined in chief on 18.02.2023. On the same day, the accused did not cross-examine the witnesses and sought for adjournment stating that the counsel for the accused is engaged elsewhere. Citing the judgments of the Hon'ble Supreme Court in ***Vinoth Kumar Vs. Punjab State*** and the judgment in ***Rajesh Yadav and others Vs. Uttar Pradesh State***, the trial Court had refused adjournment for cross-examination and closed the evidence of PW1 and PW2. Thereafter, remaining witnesses PW3 to PW8 were examined on the subsequent hearings. Those days the accused has cross-examined the witnesses on the same day. Thereafter, the accused has filed an



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application to transfer the case from the Sessions Court to Juvenile Justice Court stating that he is a minor. But, the same was dismissed.

Thereafter, the present application was filed under Section 311 Cr.P.C to recall the witnesses without citing any reason only to harass the petitioner and her daughter who is the victim of the crime and hence the order is to be set aside.

5. The learned counsel appearing for the petitioner would further submit that the reasons assigned by the trial Court to recall the witnesses is very cryptic and contrary to the judgments of the the Hon'ble Supreme Court which the learned Judge was aware and recorded the same when adjournment to cross-examine the witnesses was sought by the accused person.

6. Per contra the learned counsel appearing for the respondent/ accused would submit that the right of an accused cannot be curtailed on technicalities. The witnesses PW1 and PW2 who had spoken about certain facts, which are to be contradicted by their own statement made earlier and if it is not contradicted, it will be highly prejudiced to the



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accused. Further citing the judgment of the Hon'ble Supreme Court in

Satbir Singh Vs. State of Haryana and others reported in **2023 SCC**

OnLine SC 1086, the learned counsel submitted that the power under

Section 311 Cr.P.C should be exercised by the Court to arrive at a just

decision of the case. In this case the Judicial Magistrate has applied his

mind, considered the merits of the case and though fit that cross-

examination of PW1 and PW2 is required to arrive at a just decision.

The said finding of the trial Court cannot be faulted. In any event the

right of accused to cross-examine the witnesses on condition of

payment of costs cannot be curtailed.

7. This Court after considering the rival submissions and perusing the records as well as the dictum of the Hon'ble Supreme Court in the cases of minor victim being recalled again and again by the accused person and subjecting her to repeated turmoil and torture finds that the trial Court's order to recall PW2, the victim is unjust and has to be declined. As far as PW1 is concerned she is being the mother of the victim and the *defacto* complainant and this Court is not inclined to interfere with the order of the trial Court regarding PW1.



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8. Therefore, this Criminal Original Petition is partly allowed. The order of the trial Court in so far as recalling PW2 is set aside. The accused/ respondent is directed to pay costs of Rs.1,000/- on or before next hearing date and on such deposit, PW1 be summoned to appear before the trial Court and subject herself for cross-examination. Consequently, the connected miscellaneous petition is closed.

25.09.2024

Index : Yes/No
Neutral Citation : Yes/No

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To

WEB COPY

1. The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai – 600 083.

2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

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