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CrI.OP.No.19386 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.19386 of 2024
and CrI MP No.11372 of 2024

Vickey @ Vigneshwaran

... Petitioner

Vs.

State Rep. by Inspector of Police,
Avinashi Police Station,
Avainashi, Tiruppur District.
(Crime No.111/2021)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, and under Section 528 of BNSS, 2023, praying to set aside the order passed in CMP No.10 of 2024 in Spl. S.C.No.104 of 2021 on the file of I Additional District Judge, Sessions Judge (FAC) Mahalir Neethimandram, (FTMC), Tiruppur dated 10.07.2024.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.S.Udayakumar
Government Advocate (CrI. Side)



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ORDER

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2. However, the learned counsel appearing for the petitioner, who is aggrieved by the dismissal order, would submit that at the time of cross-examination of P.W.1, she was minor but now she has attained majority and therefore, provision of Section 33(5) of the POCSO Act, need not be applied, since certain important questions were not put to P.W.1, it is essential to recall the witness.

3. This Court, on hearing the learned counsel, directed him to produce the deposition copy of P.W.1 to ascertain whether the right of the petitioner had been denied by not allowing the recall petition. The witness was examined on 15.07.2022, at the time she was 17 years old. The petitioner has cross-examined her on certain aspects. Now he states that since at that time the witness was minor, he was not able to put certain questions which ought not to be put to a minor witness. Having she attained majority, the said impediment is not there and therefore, he



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must be given a fair opportunity to cross-examine the witness.

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4. Since the petitioner faces trial for offence under Section 5(1) read with 6 of the POCSO offence along with other IPC offences, this Court is of the view that an opportunity should be given to the petitioner herein to cross-examine the witness, since he has deposed certain incriminating material against this petitioner.

5. Hence, the Original Criminal Petition is **allowed**, the Trial Court is directed to recall P.W.1 and permit the petitioner herein to cross-examine on the day of her appearance. Consequently, the connected miscellaneous petition is closed.

29.08.2024

jv

Index: Yes/No

Internet: Yes/No



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To

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1. The Inspector of Police,
Avinashi Police Station,
Avainashi, Tiruppur District.
2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

jv

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