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Crl.O.P.No.20137 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

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

Crl.O.P.No.20137 of 2024

and

Crl.M.P.No.11679 of 2024

Jaihind @ Jayaseelan

... Petitioner

Vs.

The State Rep By Its,
The Station House Officer,
Mettupalayam,
Puducherry
Cr.No.43 Of 2023.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code / 528 of BNSS, pleaded to set aside the order passed by the Sessions Judge, Puducherry in Crl.M.P.No.114/2024 in Spl.SC.No.213 of 2023 dated 08.07.2024.

For Petitioner : Mr.T.Ananthsekar

For Respondent : Mr.K.S.Mohan Dass
Public Prosecutor (Pondy)
Asst by. Ms.N.Dhanalatchumi

ORDER

This Criminal Original Petition is filed challenging the order passed by the trial Court (POCSO Court) which has declined to recall



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PW.1 [victim minor girl]. The petitioner is none other than the father of the minor victim girl.

2. The petitioner is facing charge for offence under Section 10 of POCSO Act. Pending trial, the petitioner is in prison. After examining 11 witnesses on the side of the prosecution, he has taken out an application under Section 311 Cr.P.C., to recall all the 11 witnesses. The trial Court after considering the merit of the application, partially allowed the application ordered recall of PW.2 to PW.11, however, declined to recall PW.1, minor victim girl for the reason that the victim minor girl cannot be repeatedly summoned to the Court which will affect her mental status. This finding of the trial Court is in tune with the dictum of the Hon'ble Supreme Court rendered in *AG Vs. Shiv Kumar Yadav* reported in *(2016) 2 SCC 402*.

3. The learned Government Advocate (CrI.Side) appearing for the respondent police states that PW.1 was examined on 22.05.2023 and other witnesses were examined subsequently. Whereas, the application to recall the witnesses filed only on 14.03.2024. The trial Court considering



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the fact that 6 years old minor victim child cannot be recalled again which will subject her to further harassment declined to recall PW.1. At the same time allowed the application to recall PW.2 to PW.11. The accused being the father of the victim child, it will be inappropriate to recall PW.1 who had spoken about the accused before the Judicial Magistrate who recorded the statements under Section 164 Cr.P.C. as well as before the Special Court which has recorded the testimony of the witness. The fiduciary relationship between the victim and the accused will lead to influencing the witness either by threat or favour if the witness is recalled.

4. Considering the rival submissions and the order passed by the trial Court, this Court finds that recall of 6 years old victim witness will be contrary to the dictum laid by the Hon'ble Supreme Court. Recalling the victim witness will tantamount to harassment. The petitioner herein ought to have availed his right of cross examining the witness on the day when the witness is present and depose. The victim protection more particularly when the victim is a minor will prevail over the right of the accused.

Dr.G.JAYACHANDRAN,J.



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WEB COPY 5. Therefore, this Court finds no merit in this Criminal Original Petition. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

21.08.2024

Neutral Citation : Yes/No

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To

1.The Sessions Judge, Puducherry.

2.The Station House Officer,
Mettupalayam,
Puducherry

3.The Public Prosecuto (Pondy),
High Court of Madras,
Chennai.

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