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CrI.O.P.No.28951 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.O.P.No.28951 of 2024

and

CrI.M.P.No.16216 of 2024

Deepa

... Petitioner

Vs.

State represented by
The Inspector of Police,
Pallavaram Police Station,
Chennai District.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Samhita, 2023, to set aside the order dated 22.04.2024 in CrI.M.P.No.38 of 2024 on the file of the Mahila Court, Chengalpattu and allow the above Criminal Original Petition.

For Petitioner : Mr.P.Chandrasekar

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the dismissal of the petitioner's application before the trial Court for re-call of P.W.1 for cross examination.



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2. The learned trial Judge has dismissed the petition on the ground that even when the witness was examined in chief she has expressed her difficulty in appearing before the Court as she has to take care of her young daughter and the petitioner's request even at the time of chief examination to defer the cross examination was rejected.

3. Learned counsel for the petitioner however would submit that the witness could not be cross examined on the same day as her counsel was not prepared and that one opportunity may be given to cross examine the witness and the petitioner will abide by any stringent condition imposed by this Court.

4. Learned Additional Public Prosecutor appearing for the respondent per contra would submit that the order of the learned Judge does not call for any interference as the witness had expressed her difficulty in appearing before the Court repeatedly.

5. The petitioner is facing trial in S.C.No.171 of 2019 on the file of



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the Mahila Court, Chengalpattu for the offences under Sections 366(A), 376 r/w 34 IPC. In the order the learned Sessions Judge had extracted the recording made at the end of chief examination, wherein P.W.1 had stated that it would be difficult for her to repeatedly appear before the trial Court as she has to take care of her young daughter. The learned Judge had observed in the order that the petitioner then had not availed the opportunity to cross examine.

6. It is the case of the petitioner that his counsel had not cross examined and that the petitioner herein may not be denied the opportunity of cross-examination. Though that cannot be an excuse, the fact is that the victim has not been cross examined. This Court is of the view, considering the facts and circumstances, that the petitioner herein can be given one more opportunity to cross examine the witness on payment of costs. Hence, the petition is allowed and the petitioner can recall the victim on payment of costs of Rs.5,000/- to the victim. The petitioner shall deposit a sum of Rs.5,000/- to the credit of S.C.No.171 of 2019 on the file of Sessions Judge, Mahila Court, Kancheepuram District. On payment of the said amount of Rs.5,000/-, P.W.1 can be re-



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called. On the appearance of P.W.1., the trial Court shall disburse the said amount to her.

7. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

20.11.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Sessions Judge,
Mahila Court, Chengalpattu.
2. The Inspector of Police,
Pallavaram Police Station,
Chennai District.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.,

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