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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CrI.O.P(MD)No.3006 of 2023
and
CrI.M.P(MD)No.2749 of 2023

Velayutham

... Petitioner

Vs

The Inspector of Police,
Munnirpallam Police Station,
Crime No. 339 of 2019.

... Respondent

PRAYER: Criminal Original petitions have been filed under Sections 439 (1) (b) of the Code of Criminal Procedure, to call for the records and set aside the impugned order passed Cr.M.P No. 188 of 2020 in Special Case No. 186 of 2019 pending before the Special Court for POCSO Act cases, Tirunelveli.

For Petitioner : Mr.Vishnuvarthanan P M,

For Respondent :Mr.A.Albert James
Government Advocate (CrI.Side)



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ORDER

This petition has been filed challenging the proceedings of the Special Court for POCSO Act Cases, Tirunelveli in Cr.M.P.No.188 of 2020, dated 22.09.2021, dismissing the application filed by the petitioner under Section 311 of Cr.P.C., for recalling the witnesses P.W.1 to P.W.4 and P.W.8 for cross examination, for non-prosecution.

2.Heard the learned Counsel appearing on either side.

3.The petitioner is facing trial before the Court below for the offence under Sections 506(2) and 376 of IPC and Sections 6 and 5(L) of the POCSO Act.

4.The prosecution examined the witnesses P.W.1 to P.W.4 and P.W.8 in chief and these witnesses were not cross examined by the petitioner. Thereafter, he filed an application under Section 311 Cr.P.C., to recall the witnesses P.W.1 to P.W.4 and P.W.8. This petition was not properly prosecuted by the petitioner and hence it was dismissed for default on 22.09.2021.



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5.The learned Government Advocate (CrI.Side) submitted that there are totally 23 witnesses in this case and 21 witnesses have already been examined and only the investigation officer is yet to be examined on the side of the prosecution. He further submitted that the petitioner is a history sheeter and he has many previous cases against him. The petitioner is only wanting to prolong this case and therefore, sought for dismissal of the present petition.

6.The learned Counsel appearing for the petitioner submitted that the petitioner is facing serious charges and that the petition filed by the petitioner for recalling other witnesses was allowed by the Court below and those witnesses were also cross examined. However, unfortunately, the application filed to recall the witnesses P.W.1 to P.W.4 and P.W.8 was not prosecuted and therefore, it was dismissed for default. He further submitted that one last opportunity may be given to the petitioner to recall these witnesses for cross examination.

7.In the considered view of this Court, the petitioner is facing serious charges. The witness P.W.1 is the victim girl. The witnesses P.W.2



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to P.W.4 are hearsay witnesses. The witness P.W.8 is said to be eye witness in this case.

8. There is a bar under Section 33(5) of the POCSO Act, wherein, the Special Court must ensure that the child is not repeatedly called to testify before the Court. This provision has been interpreted strictly since a child should not be made to undergo the mental agony by revisiting the incident once again. Therefore, in POCSO cases, the accused is expected to cross examine the victim girl on the same day, when the victim girl is examined in chief. If the victim girl is not able to be examined, there must be sufficient grounds to recall the victim girl. It will also depend upon the nature of allegations that have been made in a given case.

9. In the instant case on going through the final report filed against the petitioner and the manner, in which, the incident had taken place, this Court does not find any ground to recall the witness P.W.1, in view of the bar under Section 33(5) of the POCSO Act. However, considering the seriousness of the charges faced by the petitioner, this Court is inclined to recall the witnesses P.W.2 to P.W.4 and P.W.8 for cross examination.



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10.In the light of the above discussion, the order passed by the Court below in Cr.M.P(MD)No.188 of 2020, dated 22.09.2021 is hereby partly set aside. The Court below is directed to issue summonses to the witnesses P.W.2 to P.W.4 and P.W8 for cross examination. These witnesses shall be cross examined by the petitioner on the same day of their appearance before the Court. Each of those witnesses shall be paid a cost of Rs.1,000/-. The cross examination shall be completed on the same day. If for any reason, the petitioner fails to cross examine these witnesses on the day of their appearance, the petitioner will forfeit his right to recall those witnesses in future.

11.In the result, this criminal original petition is partly allowed in the above terms and there shall be a direction to the Court below to complete the proceedings in Spl.S.C.No.186 of 2019, within a period of six weeks, from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

18.11.2024

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR



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To

1.The Special Court for POCSO Act Cases,
Tirunelveli.

2.The Inspector of Police,
Munnirpallam Police Station,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

LR

Crl.O.P(MD)No.3006 of 2023

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