



Crl.O.P.(MD)No.7062 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.7062 of 2023
and Crl.M.P. (MD) No.6114 of 2023

P.James

... Petitioner

Vs.

The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli.

Cr. No. 143 of 2018.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crl M.P No. 303 of 2023 in Spl C.C No. 115 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli and set aside the order dated 09.03.2023 with regarding to PW2.

For Petitioner : Mr.S.Muthumalairaja

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P No. 303 of 2023 in Special C.C No. 115 of 2019, dated 09.03.2023, insofar as dismissing the application with respect to P.W.2.

2.Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The petitioner is facing trial before the Court below for offence under Section 366A of IPC and Section 6 of the Protection of Children from Sexual Offences Act 2012, read with Section 109 of IPC. The prosecution examined P.W.1 to P.W.3 and these witnesses were also cross examined on the side of the petitioner on 17.03.2022. Thereafter, the remaining witnesses were also examined and questioning was also completed under Section 313(1)(b) of Cr.P.C. The case was pending for examination of defense side witnesses and at this point of time, the



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application came to be filed under Section 311 of Cr.P.C. before the Court below to recall P.W.1 to P.W.3 for the purpose of further cross examination.

4.The Court below partly allowed this application and permitted the petitioner to recall P.W.1 and P.W.3 for further cross examination. Further, the application was dismissed insofar as P.W.2 is concerned and the Court below took into consideration the bar under the POCSO Act and also considered the fact that P.W.2 was the victim girl in this case.

5.In the considered view of this Court, the recall petition was filed only on the ground that the new counsel had taken charge of the case. Even in the application that was filed under Section 311 of CR.P.C., there is absolute no reason assigned as to why the witnesses are being recalled when those witnesses have already been cross examined on the side of the petitioner.

6.The Court below in order to afford an opportunity to the



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petitioner permitted the petitioner to recall P.W.1 and P.W.3 for further cross examination. The Court below considered the age of the victim girl and also the bar under Section 33(5) of the POCSO Act. Hence, the jurisdiction exercised by the Court below does not suffer from any illegality warranting the interference of this Court.

7.In the result, this Criminal Original Petition is dismissed and there shall be a direction to the Court below to complete the proceedings in Special C.C No. 115 of 2019 within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

19.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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- To
- 1.The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli.
 - 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

PKN

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Dated: 19.11.2024