



CRL OP(MD). No.12310 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.08.2024

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD). No.12310 of 2024

C.Murugan

... Petitioner

Vs

The Inspector of Police,
S. Jeeyapuram,
All Women Police Station,
Trichy District.
(Crime No. 34/2021)

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order in CrI.M.PNo. 1583/2022 dt 09.01.2023, Sp.S.C.No. 49/2022 for offences U/s. 5(1), 5(n), 5(j)(ii) r/w 6(1), 16 and 17 of POCSO Act, 2012 on the file of the learned Session Judge of Mahila Court, Tiruchirapalli.

For Petitioner : Mr.S.S.Sundarapandian

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor.



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CRL OP(MD), No.12310 of 2024

ORDER

This criminal original petition has been filed seeking to set aside the order in CrI.M.P.No.1583 of 2022 dated 09.01.2023 on the file of the learned Sessions Judge of Mahila Court, Thiruchirapalli.

2. The case was registered on 23.12.2021 and the respondent police has filed the final report before the Court concerned only in the year 2022. P.W.1 was examined on 25.08.2022 and P.W.2 was examined on 23.09.2022. The petitioner failed to cross-examine both the witnesses when they were available for cross examination. Thereafter, the petitioner has filed an application in Cr.M.P.No.1583 of 2022, under Section 311 of Cr.P.C., to recall the witnesses and the same was dismissed by order dated 09.01.2023. Aggrieved over the same, the petitioner has filed this present application to set aside the order passed by the trial Court.

3. The learned Counsel for the petitioner submits that the petitioner is facing the trial for the offence under Sections 5(1), 5(n), 5(j)(ii) r/w



CRL OP(MD), No.12310 of 2024

6(1), 16 and 17 of POCSO Act, 2012. The petitioner's Counsel failed to cross-examine the witnesses when they are available in the month of August and September, 2022. Therefore, on the request of the petitioner, the application was filed by him under Section 311 of Cr.P.C. Even thereafter, the earlier Counsel has not prosecuted the case properly and therefore, the petitioner has changed his counsel and moved this present application before this Court. He further submits in the event, if P.W.1 and P.W.2 are not cross-examined, he cannot establish his innocence before the trial Court and therefore, he requested this Court to provide one more opportunity for cross-examining the said witnesses.

4. The learned Additional Public Prosecutor on instruction from the respondent police submits the order dated 09.01.2023, is challenged by the petitioner only in the month of July, 2024, in order to drag the proceedings. Though the witnesses were available for interrogation, the petitioner has not cross-examined the witnesses. He further submits that P.W.2 is a minor and the minor cannot be harassed in such a manner by repeatedly calling her to adduce evidence.



CRL OP(MD). No.12310 of 2024

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5. This Court considered the rival submissions made.

6. The conduct of the petitioner has in not cross-examining the witnesses, who are available for interrogation, has to be deprecated. The petitioner filed an application under Section 311 of Cr.P.C and the same was dismissed. The petitioner ought to have challenged the same at the earliest, however, the petitioner has filed this present application only in the month of July, 2024. As rightly pointed out the learned Additional Public Prosecutor, the victims cannot be harassed repeatedly calling them for interrogation. At the same time, this Court has to consider the seriousness of the offence for which the petitioner is facing the trial before the trial Court. Therefore, the petitioner has to be provided opportunity to establish his case before the trial Court.

7. Admittedly, the petitioner has not cross-examined the main witnesses i.e., P.W.1 and P.W.2. Therefore, this Court provides one more opportunity to the petitioner to cross-examine P.W.1 and P.W.2. . The impugned is set aside. The petitioner is directed to file a fresh application along with the demand draft for a sum of Rs.20,000/- for



CRL OP(MD), No.12310 of 2024

recalling the P.W.1 and Rs.30,000/- for recalling the P.W.2. In the event, if the petitioner files an application along with demand draft, the trial Court shall fix a specific date for cross-examination of the witnesses. On the said date, the petitioner is expected to cross-examine the witnesses without any fail. In the event, if the petitioner fails to cross-examine the witnesses, the trial Court shall proceed with the trial and conclude the same.

8. With the above said direction, this Criminal Original Petition is allowed.

01.08.2024

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

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CRL OP(MD), No.12310 of 2024

B.PUGALENDHI,J

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To

1.The Inspector of Police,
S. Jeeyapuram,
All Women Police Station,
Trichy District.

2. The Sessions Judge, Mahila Court,
Thiruchirappalli.

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

Order made in
Crl.O.P.(MD)No.12310 of 2024

01.08.2024