



Crl.O.P.(MD)No.15530 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15530 of 2024
and
Crl.M.P.(MD)No.9720 of 2024

Sritharan

... Petitioner

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Papanasam,
Thanjavur District.
(Crime No.32 of 2023)

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur in Spl.S.C.No.33 of 2024 and set aside the order made in Crl.M.P.No.273 of 2024 in Spl.S.C.No.33 of 2024 pending on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

The Criminal Original Petition has been filed for setting aside the order passed in Crl.M.P.No.273 of 2024 in Spl.S.C.No.33 of 2024 dated 01.07.2024 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, dismissing the petition filed under Section 311 Cr.P.C.

2. The petitioner is facing the case in Spl.S.C.No.33 of 2024 for the offences under Sections 5(g), 5(l), 13(a), 14(1), 14(2), 6(l) and 17 of POCSO Act r/w Section 67(B)(e) of Information Technology Act. The petitioner has filed a petition under Section 311 Cr.P.C. to recall P.W.1 for the purpose of cross-examination and the learned Sessions Judge has dismissed the petition. Aggrieved by the order of dismissal, the present petition came to be filed.

3. Admittedly, P.W.1-victim girl was chief examined on 17.05.2024.



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4. The learned counsel appearing for the petitioner would submit that co-accused has filed a petition before the trial Court to recall P.W.1 and since the same was dismissed, he has preferred a petition before this Court in Crl.O.P.(MD)No.13824 of 2024 and this Court vide order dated 22.08.2024 has allowed the petition and it is necessary to refer the observation and finding of the learned Judge of this Court hereunder:-

“6. It is seen that the victim child was examined on 17/5/2024. When the witness is a child witness, she cannot be made to attend the Court and undergo the trauma again and again on various dates and therefore, adequate care must have been taken by the petitioner to cross examine the victim on the same date. But, however, the only factor seems to be that the Legal Aid counsel was appointed on 14/6/2024 and in view thereof, considering the fact that in a case involving serious allegations, one opportunity can be granted to the accused to cross examine the victim. It is made clear that all the necessary formalities to examine the child witness to be followed on the next hearing date or any such date as may be specially fixed by the trial court, the victim shall be produced before the court. The Trial court shall fix a date for production of PW.1 for cross examination. On that date, without fail the petitioner herein / accused



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No.2 shall cross examine the PW1. It is made clear that the cross examination should not amount to further victimize the child. Even though on 17.05.2024, on behalf of the other accused cross examination was done, the petitioner's counsel said to have been absent. Therefore on the subsequent hearing, the Court has nominated a Legal Aid counsel on 14/6/2024. Since the petitioner's Counsel was not present, and when the Legal Aid Counsel was nominated and subsequently, when the offence is serious, one opportunity has to be granted to the petitioner. This court also considers the fact that the victim cannot be repeatedly subjected to harassment. She has already deposed and was also cross examined, however, only in the extraordinary circumstances, one last opportunity is granted to the petitioner / accused. After the receipt of a copy of this order, the Trial Court shall fix any one day for the victim to be produced and on that day, cross examination should be done by the petitioner / 2nd accused and the same shall be permitted only with reference to the specific allegations as against the petitioner / 2nd accused and the child cannot be permitted to undergo the entire ordeal once again.”

5. The learned counsel appearing for the petitioner would submit that the petitioner is ready to cross-examine the P.W.1 within a week



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time stipulated by this Court.

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6. Considering the above facts and circumstances and taking note of the facts that P.W.1 was not at all cross-examined and the order passed by this Court in respect of the co-accused, this Court is inclined to give one more opportunity to the petitioner to cross examine the witness in order to establish his defence. But at the same time, this Court is of the further view that the petitioner must be mulcted with costs.

7. In the result, the Criminal Original Petition is allowed and the impugned order, dated 01.07.2024 in Cr.M.P.No.273 of 2024 in Spl.S.C.No.33 of 2024 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, is set aside and the petition to recall the P.W.1 is allowed on payment of witness batta as **Rs.3,000/- (Rupees Three Thousand only)** by the petitioner to the P.W.1/ victim girl within a period of one week from the date of receipt of copy of this order and on further condition that the petitioner side should cross examine the said witness whenever the witness is produced before the Court and in case of the petitioner's failure to cross examine the



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particular witness, then he will forfeit his rights to cross examine the witness. The trial Court is directed to summon the said witness for the purpose of cross examination and complete the examination of the said witness within one week from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

13.09.2024

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

Note : Issue order copy today (13.09.2024)

To

- 1.The Principal Special Court for Exclusive Trial of Cases
under POCSO Act, Thanjavur.
- 2.The Inspector of Police,
All Women Police Station,
Papanasam,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
Crl.O.P.(MD)No.15530 of 2024
and
Crl.M.P.(MD)No.9720 of 2024

Dated: 13.09.2024