



Crl.O.P.(MD)No.18352 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.18352 of 2024

and

Crl.M.P.(MD)No.11400 of 2024

Karunakaran

: Petitioner/Petitioner/Accused

Vs.

State Through

The Inspector of Police,

Vedasandur Police Station,

Dindigul District.

Crime No.69 of 2024

: Respondent/Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to set aside the order passed in Cr.M.P.No.1279 of 2024 dated 11.09.2024 in Spl.S.C.No.41 of 2024, on the file of the Special Sessions Court (under POCSO Act, 2012), Dindigul.

For Petitioner : Mr.B.Azhagesh

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



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ORDER

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The petitioner, who is an accused in Crime No.69 of 2024, for the offences under Sections 363 and 376(3) of IPC and Section 5(1) r/w Section 6 of POCSO Act, 2012, has filed this petition seeking to to set aside the order passed in Cr.M.P.No.1279 of 2024 dated 11.09.2024 in Spl.S.C.No.41 of 2024, on the file of the Special Sessions Court (under POCSO Act, 2012), Dindigul.

2.The case against the petitioner is that the petitioner and the victim girl had a love affair for more than a year and on 21.02.2024, he took the victim in his house and also had penetrative sexual assault. Later, on the complaint of the victim's father, the case has been registered and the victim was secured and on completion of investigation, charge sheet has been filed. In this case, the petitioner had cross-examined all the witnesses except for P.W.1 and P.W.2, who are the father of the victim and the victim.

3.The learned counsel for the petitioner submitted that the petitioner and the victim girl were in love with each other and it was the victim who



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had continued the relationship with the petitioner and he was forced to such a situation unknowingly. Due to the young age and psychological changes, they have been moving in close proximity, which resulted in penetrative sexual assault. The petitioner took sometime to collect certain facts with regard to the relationship between him and the victim girl. The petitioner is a victim of circumstances, he is only aged about 19 years and he alone cannot be blamed for the love, for which he is facing serious charges and the trial. The petitioner's recall petition has been dismissed for the reason that they citing Section 33(5) of the Act, wherein, the victim is not to be called often to the Court. He further submitted that the right of cross-examination is only means for the petitioner to prove his defence. Further, the petitioner is facing prosecution for a deemed offence, where statutory presumption is against him. In view of the same, unless the petitioner proved his defence, his right would be denied and great prejudice would be caused to him. He further submitted that the evidence will be complete only by testing by way of cross-examination. This right of petitioner is a constitutional right that cannot be denied on technicalities.

4.The learned Additional Public Prosecutor submitted that the trial



Court had rightly dismissed the recall petition. On 19.08.2024, P.W.1 and P.W.2 have been examined in chief. But the petitioner failed to cross-examine them. On the same day, P.W.3 to P.W.8 were cross-examined by the petitioner. The petitioner, for obvious reasons, had failed to cross-examine P.W.1 and P.W.2 and now claims that he has been denied a chance of cross-examination. Further, in this case, all the witnesses have been cross-examined. Now the case is at the penultimate stage. At this stage, permitting the petitioner to cause a second trial, which will further harass the victim girl. Hence, he strongly opposed to allow this petition.

5.Considering the submissions and perused the materials, it is seen that, in this case, except for P.W.1 and P.W.2, all the witnesses have been cross-examined by the petitioner. It is a case that the petitioner and the victim girl were in love with each other. It is seen that the petitioner is a young age of 19 years at the time of occurrence. Their love relationship is also not denied. The witness evidence is complete, only when it is subjected to cross-examination. Though there may be restrictions under Section 33(5) of the Act, not to call the victim repeatedly. In this case, the victim had appeared for examination in chief and thereafter, she had not been called repeatedly for the purpose of cross-examination. Now she can



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be called further and she is residing in the nearby place of Dindigul. P.W.1 is the father of the victim. In view of the seriousness of the offence and the punishment for the Act, this Court finds that the recall of P.W.1 and P.W.2 would be necessary otherwise it would amount to denial of his valuable right of cross-examination.

6. Accordingly, the Criminal Original Petition is allowed and the order made in Cr.M.P.No.1279 of 2024 dated 11.09.2024 in Spl.S.C.No.41 of 2024, on the file of the Special Sessions Court (under POCSO Act, 2012), Dindigul, is set aside. P.W.1 and P.W.2 are permitted to be recalled. The petitioner to cross-examine the witness on the same day on the appearance without giving any reason. After cross-examination of P.W.1 and P.W.2, the trial Court is directed to complete the trial and dispose of the case as per law. Consequently, connected miscellaneous petition is closed.

05.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 11.11.2024.



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M.NIRMAL KUMAR,J.

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To

- 1.The Special Sessions Court (under POCSO Act, 2012), Dindigul.
- 2.The Inspector of Police,
Vedasandur Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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