



Crl.O.P.(MD)No.18673 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18673 of 2024

Subramaniyan

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
Crime No.2 of 2021

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order passed by the learned Special Court for POCSO Act Cases, Tirunelveli in Crl.M.P.No.2605 of 2023 dated 12.09.2023 and allow the petitioner to recall PW.2 for cross examination.

For Petitioner : Mr.G.Thiruvartselvan

For R1 : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)



CrI.O.P.(MD)No.18673 of 2024

ORDER

WEB COPY

This criminal original petition has been filed seeking orders to set aside the order passed in CrI.M.P.No.2605 of 2023 dated 12.09.2023 on the file of the Special Court for POCSO Act Cases, Tirunelveli and allow the petitioner to recall PW.2 for cross examination.

2.It is seen that the petitioner is the sole accused in Spl.C.C.No.33 of 2022, filed for the offence under Sections 294(b) IPC, Section 4 TNPHW Act and Sections 10, 9(m) POCSO Act. It is not in dispute that the prosecution has examined all the witnesses, except LWs.24 & 25 and when the case was pending for examination of the said witnesses, the petitioner filed a petition under Section 311 Cr.P.C., to recall P.W.1 and P.W.2 for cross examination. The learned Magistrate considering the fact that P.W.1 is father of the victim girl has allowed the petition and since P.W.2 is the victim girl, dismissed the said petition.

3.As rightly pointed out by the learned Government Advocate(CrI.side), when P.W.2 was examined in chief, the learned counsel for the accused was present and he was not ready to cross-examine and even though, the learned Judge expressed that in various



CrI.O.P.(MD)No.18673 of 2024

judgments of the Hon'ble Supreme Court and High Courts, witnesses has to be cross examined on the same day, they have not chosen to corss-examine. More over, P.W.2 was examined in chief on 20.10.2022 and the present application was filed in the month of August, 2023.

4.Considering the above facts and circumstances of the case, the decision of the learned Judge in rejecting the petitioner request for recalling P.W.2 cannot be found fault with. But the fact remains that P.W.2 was not at all cross-examined by the petitioner. Since the petitioner is facing serious offences under POCSO Act, this Court is of the view that the petitioner should be given one more opportunity to cross examine P.W.2, in order to prove his alleged defence. But at the same time, this Court is of the further view that the petitioner must be mulcted with costs and with further condition that the petitioner/accused, should cross examine P.W.2 on the day, when the witness is produced before the Court and if for any reason, the petitioner fails to cross examine the said witness on that particular day, then he will forfeit his rights to cross examine her.



CrI.O.P.(MD)No.18673 of 2024

WEB COPY

5.In the result, the Criminal Original Petition stands allowed and the impugned order, passed by the learned Special Court for POCSO Act Cases, Tirunelveli in CrI.M.P.No.2605 of 2023 dated 12.09.2023 is set aside in respect of P.W.2 alone and the petition to recall P.W.2 is allowed on payment of cost of Rs.15,000/- (Rupees Fifteen Thousand Only) to the P.W.2/victim, within a period of one week from the date of receipt of copy of this order and on payment of process fee and batta to the said witness and on further condition that the petitioner side should cross examine the witness whenever the witness is produced before the Court and in case of the petitioner's failure to cross examine the particular witness, then he will forfeit his rights to cross examine the witness. The trial Court is directed to summon P.W.2 for the purpose of cross examination and complete the examination of the said witness within two weeks from the date of receipt of copy of this order.

29.10.2024

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



CrI.O.P.(MD)No.18673 of 2024

WEB COPY

To

- 1.The Special Court for POCSO Act Cases, Tirunelveli
- 2.The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.O.P.(MD)No.18673 of 2024

K.MURALI SHANKAR,J.

gns

CrI.O.P.(MD)No.18673 of 2024

29.10.2024