



Crl.O.P.(MD)No.21076 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21076 of 2024

Rajadurai

.. Petitioner

Vs.

The Inspector of Police
Batlagundu Police Station
Dindigul District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to set aside the order dated 25-07-2024 passed in Crl.M.P.No.901 of 2024 in SPL.S.C.No.221 of 2023 with respect to PW1, PW2 by allowing this Criminal Original Petition.

For Petitioner	: Ms.P.Krishnaveni
For Respondent	: Mr.K.Sanjai Gandhi Government Advocate(Crl.Side)

ORDER

The petitioner is facing trial in S.C. No.22 of 2023 for the offences under Sections 294(b), 506(2) of IPC r/w.11(1)(iv) and 12 of POCSO Act, 2012. Since the earlier counsel failed to cross examine the witnesses and



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none of the witnesses have been cross examined the petitioner has filed a petition under Section 311 of Cr.P.C. in Crl.M.P.No. 901 of 2024 to recall P.W.1 to P.W.13 . The trial court considering the plea of the petitioner by an order dated 25.07.2024 allowed the petition in part. As regards cross examination of P.W.1 and P.W.2 the petition stood dismissed. As regards cross examination P.W 3 to P.W.8 the petitioner was directed to pay a cost of Rs.1000/- each witness as cost and as regards P.W.9 to P.W.13 the petitioner was directed to pay a sum of Rs.2000/- each witness as cost, against which the present petition filed

2. The contention of the petitioner is that the petitioner and the victim/P.W.2 hail from the same village and the petitioner aged about 17 years at the time of occurrence and not knowing the seriousness and consequences of the offence at that age the petitioner by infatuation had committed certain mistakes which is now projected as though the petitioner followed the victim girl when she was going to school, pulled her school bag from behind and thereafter came to the house of the victim knocked the door and for the third time he had come to school and brandishing knife and threatened her. Thereafter when the victim's mother questioned she was abused, hence the complaint lodged. Apart from this



aspect there is nothing against the petitioner. The petitioner has completed 12th standard and employed in a private Mill. The petitioner not knowing the complicity of the court procedure engaged an advocate who was only present and not defended the petitioner in any manner. Later after the examination of witnesses the petitioner understood the seriousness of the case and approached the present counsel who filed the recall petition for cross examination of the witnesses which is very much important, without cross examination the evidences of witnesses go unchallenged and the petitioner would be denied his right of defence and thereby denied justice.

3. The learned Government Advocate(Crl.Side) submitted that the trial Court rightly dismissed the petition filed under Section 311 of Cr.P.C as regards P.W.1 and P.W.2 who are mother and the victim. As regards the other witnesses it permitted the petitioner to recall but with condition and the condition imposed is normal, hence seeks dismissal of the petition.

4. Considering the fact and circumstances of the case it is seen that the petitioner was aged about 17 years at the time of occurrence and unknowingly at the adolescent age by infatuation had committed certain acts,for which he is facing prosecution. The earlier counsel not conducted



the case in the manner expected of. The trial Court allowed to recall P.W. 3 to P.W. 13 but with the costs. As regards P.W.1 and P.W.2 the contention of the petitioner that there had been improvement and contradictions to their earlier statement which has to be necessarily put to the witnesses, for purpose of contradiction which cannot be denied. cannot be brushed aside.

5. Considering the same this Court is inclined to set aside the order of dismissal passed by the trial Court with regard to recall for cross examination of P.W. 1 and P.W.2 and with regard to imposing of costs. It is seen that all the witnesses hail in and around Nilakottai, Dindigul District Finding that the petitioner is a daily wager working in the Mill, this Court finds imposing of cost by the trial Court would cause great hardship and it is onerous condition and petitioner is unable to bear huge cost.

6. In view of the same this Criminal Original Petition stands allowed and the order passed by the Special Court for Exclusive Trial of Cases under the POCSO Act, Dindigul in Crl.M.P. No.901 of 2024 dated 25.07.2024 is set aside. This Court imposes a cost of Rs.500/- to each of



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the witnesses namely P.W.1 to P.W.9. As regards P.W. 10 to P.W. 13 who are official witnesses no cost required to be imposed.

7. With the above, the petition is allowed. The petitioner to deposit a sum of Rs.4500/- (Rs.500*9 = Rs.4,500/-) within ten days from the date of receipt of a copy of this order before the trial Court. Thereafter witnesses to be recalled for cross examination. The trial Court is directed to complete this exercise as expeditiously as possible.

04.12.2024

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

1. The Special Court for Exclusive Trial of Cases
under the POCSO Act, Dindigul
2. The Inspector of Police
Batlagundu Police Station
Dindigul District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

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