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CrI.O.P.No.32667 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.32667 of 2024

K.Kannappan

... Petitioner

Vs.

The State Rep. by its

(Inspector of Police)

All Women Police Station (AWPS)

Cheyyar Town

Cheyyar Taluk

Tiruvannamalai District

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 12.09.2024 passed in CrI.M.P.No.1293 of 2024 in Special S.C.No.5 of 2023 by the Special Judge, Special Court for Cases Exclusive Trial under POCSO Act at Tiruvannamalai.

For Petitioner

: Mr.L.Gavaskar

For Respondent

: Mr.S.Sugendran

Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed by the petitioner to set aside the order dated 12.09.2024 passed in CrI.M.P.No.1293 of 2024 in Special S.C.No.5 of 2023 by the Special Judge, Special Court for Cases Exclusive Trial under POCSO Act at Tiruvannamalai.

2. The case of the petitioner is that based on the complaint given by the mother of the victim girl, the respondent police registered the case in Crime No.9 of the 2020 against the petitioner for the offence under Sections 363, 366, 376(2)(n), 506(2) IPC read with Sections 3(a), 4, 5(l), 5(j) (ii) and 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The respondent police after completion of investigation, filed the final report and the same was taken on file in S.C.No.5 of 2023 by the Special Judge, Special Court for Cases Exclusive Trial under POCSO Act at Tiruvannamalai. Thereafter, the prosecution witnesses namely P.W.1 to P.W.10 were examined in chief. However, the petitioner could not cross examine them. Hence, the



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petitioner filed a petition in CrI.M.P.No.1293 of 2024 under section 311 of

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Cr.P.C. to recall the prosecution witnesses namely P.W.1 to P.W.10 for cross examination. Though the learned Special Judge allowed the petition, imposed cost of Rs.32,000/- towards cost for the witnesses to be paid on or before 19.09.2024. Since the petitioner could not arrange said amount, he filed a petition in CrI.M.P.SR.No.1677 of 2024 on 19.09.2024 to extend the time to deposit the said cost, whereas the trial Court declined to entertain the extension petition and as such, dismissed the recall petition on the ground that the conditional order was not complied with. Hence, the present revision is filed.

3. The contention of the petitioner is that the petitioner is a poor agricultural Coolie and therefore, he could not mobilize such a huge cost of Rs.32,000/-.

4. Heard both sides and perused the materials available on record.

5. A reading of the order passed by the Special Judge shows that the Special Judge has clearly given reasons for imposing such cost that the victim



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was aged 15 years at the time of occurrence and subsequently, she gave birth to

a child and since she was a minor, the child was given to the custody of Tamil

Nadu Cradle Baby Scheme. Now the victim girl is going to school and calling

her once again to the Court for giving evidence, would cause her mental agony.

Therefore, the learned Special Judge imposed cost of Rs.5,000/- to

P.W.1/victim for the mental agony travel expenses. P.W.2 and P.W.3 are parents

of the victim and they are Coolie workers and they were already dragged to the

Court for some time for chief examination. Considering their economic

condition and if they came to Court, they would lose their income and

therefore, the learned Special Judge imposed cost of Rs.3,000/- to each of

them. P.W.4 and P.W.5 are working in other Districts and they have to come to

Court leaving their work and therefore, imposed cost of Rs.2,000/- to each of

them. P.W.6 who is the Doctor presently working as an Assistant Professor at a

Private Medical College and Hospital at Chennai and P.W.10/ Doctor presently

studying higher studies at a Private Medical Hospital at Bangalore and they



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have to come all the way from Chennai and Bangalore respectively to give

evidence and therefore, imposed cost of Rs.5,000/- to each of them. P.W.7 also a Doctor and presently working at Chengalpet District and he has to travel all the way from Chengalpet to give evidence and therefore, imposed cost of Rs.3,000/- to P.W.7. Further P.W.8 and P.W.9 are also working in other Districts and therefore, the special Judge imposed cost of Rs.2,000/- to each of them. In all, the petitioner was directed to deposit a sum of Rs.32,000/- before the trial Court towards cost to the witnesses.

6. Now the petitioner is challenging only the cost imposed by the trial Court.

7. A perusal of the records shows that the prosecution witnesses were examined in chief however, the petitioner did not cross examine them. Subsequently the petitioner filed a petition to recall the witnesses invoking Section 311 Cr.P.C. The learned Special Judge, in order to give an opportunity to the petitioner, allowed the petition, however, considering the fact that the



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witnesses have to spend some time leaving their work/job to come to the Court

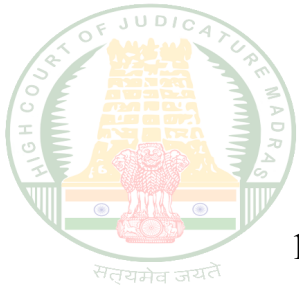
for giving evidence, imposed cost towards cost to the witnesses. The order of the Special Judge is well founded reasons.

8. The Hon'ble Supreme Court and also this Court, time and against has held that in POCSO Cases, the witnesses especially the victim or their witnesses should not be dragged unnecessarily.

9. Even Section 35 of POCSO Act says that evidence of the victim should recorded within a period of thirty days and the trial has to be completed within a period of one year from the date of taking cognizance, as follows;

(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.



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10. The present case in S.C.No.5 of 2023 is pending from 2023. Despite

fair opportunity was given to the petitioner, he failed to utilize the same. This

Court does not find any reason to interfere with the order of the Special Judge.

Therefore, this Court is not inclined to entertain this petition.

11. Accordingly, this Criminal Original Petition is dismissed.

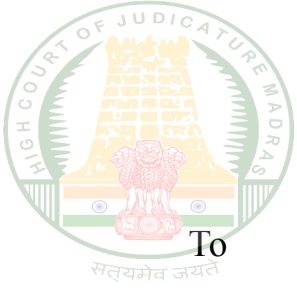
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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

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1. The Special Judge,
Special Court for Cases Exclusive Trial under POCSO Act
Tiruvannamalai.
2. The Inspector of Police
All Women Police Station (AWPS)
Cheyyar Town
Cheyyar Taluk
Tiruvannamalai District
3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN. J.

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