



Crl.O.P.(MD)No.2568 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :12.02.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD)No.2568 of 2025

and

CrI.M.P.(MD)No.1748 of 2025

Ranjith

... Petitioner

Vs

The State rep. by,
The Inspector of Police,
Virusvedu Police Station,
Dindigul District,
(Crime No.101 of 2023)

... Respondent

Prayer : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records in Cr.M.P.No.4 of 2024 in Spl.S.C.No.29 of 2024 on the file of the learned Fast Track Mahila Court, Dindigul dated 26.12.2024 and set aside the same.

For Petitioner : Mr.S.Muniyandi

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor (Crl. side)



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ORDER

This petition has been filed by the petitioner to set aside the order passed by the learned Fast Track Mahila Court, Dindigu in Cr.M.P.No.4 of 2024 in Spl.S.C.No.29 of 2024 dated 26.12.2024, wherein the petitioner herein has filed the petition to recall the PW1 to PW3. The Trial Court partly allowed the petition in respect of PW2 and PW3 and dismissed the petition in respect of of PW1. Hence, the present criminal original petition has been filed.

2. The learned counsel appearing for the petitioner would submit that the petitioner is accused in the above said case and already PW1 to PW3 were examined in chief on 27.09.2024 and 25.10.2024 respectively. On the date of examination, the petitioner was unable to cross examine witnesses due to non-availability of documents enclosed in the charge sheet and thereafter, they filed petition to recall PW1 to PW3 and the same was partly allowed in respect of PW2 and PW3 but the petition was dismissed in respect of PW1. PW1 is the victim and without cross examining PW1, the case of the defence of the petitioner cannot be established. Therefore, PW1 has to be cross examined.



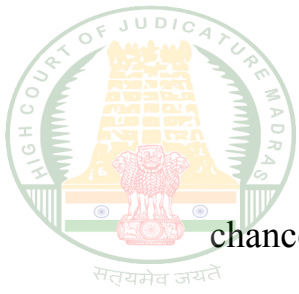
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3. The learned Additional Public Prosecutor (Criminal Side) appearing for the respondent would submit that already PW1 and PW2 were chief examined on 27.09.2024 and 25.10.2024 respectively and the petitioner has failed to cross examine the witnesses. Thereafter, they filed petition before the Trial Court and the Trial Court allowed the petition in respect of PW2 and PW3 and since PW1 is the victim, the Trial Court correctly dismissed the petition. Therefore, the present petition is liable to be dismissed.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In case of PW1 is the victim and already she was chief examined on 27.09.2024. The other witnesses PW2 and PW3 were also already examined in chief but not cross examined but the petitioner has failed to cross examine the witnesses on the date of examination of witnesses. The petitioner has filed petition before the Trial Court to recall PW1 to PW3. The Trial Court allowed the petition in respect of PW2 and PW3. Since PW1 is the victim, the Trial Court dismissed the petition. Once the Trial Court allowed the petition in respect of PW2 to PW3, in order to give fair



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chance to the petitioner, the learned Trial Court ought to have considered the application of the petitioner for PW1 also.

6. It is true that PW1 is the victim and the charges are under Section 450 and 366 of IPC and also Section 6 of Protection of Child from Sexual Offences Act, 2012. Considering the gravity of the offense and in order to give a fair chance to the petitioner, it is appropriate to allow this petition by setting aside the order of the Trial Court.

7. It is true that the Court has to ensure that the child is not called repeatedly to testify in the Court as far as the POCSO Cases are concerned. At the same time, the Court has also give opportunity for cross examine the witnesses to ensure fair trial. The charges are viz., Sections 450 and 366 of IPC, 186 and Section 5 and 6 of POCSO Act, 2012. Though the petitioner failed to cross examine the witnesses on the particular date, on that ground alone the Court cannot prevent the right of the petitioner to cross examine the witnesses. Therefore, in order to ensure the fair trial as in order to give a fair chance to the petitioner, it is appropriate to allow this petition by setting aside the order of the Trial Court.



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8. In view of the above discussion, this petition is allowed and the order passed by the Trial Court in Cr.M.P.No.4 of 2024 in Spl.S.C.No.29 of 2024 is set aside. The petitioner shall deposit a sum of Rs.1000/- before the Trial Court within a period of 15 days from the date of receipt of a copy of this order. On such deposit being made, the Trial Court has to issue summons to the victim and fix the date for cross examination. After appearance of the witness, the petitioner has to cross examine the witness on the same day itself. The deposited amount shall be paid to the petitioner after cross examination.

9. With the above said observations, the criminal original petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

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P. DHANABAL, J.

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To

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