

CRL.A(MD).No.1129 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No1129 of 2024

1.Alfasith

2.Sainabha

3.Javith

... Appellants/Petitioners/

Accused Nos.1 to 3

Vs.

1.The State of Tamil Nadu represented by its,
The Deputy Superintendent of Police,
Dindigul Rural,
Dindigul District.

... Respondent/Complainant

2.The State represented by,
The Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.
(Crime No.92 of 2023)

... Respondent/Respondent/Complainant

3.Sudha

... Respondent/Defacto Complainant

Prayer : This Criminal Appeal is filed under Section 14(A)(2) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, to set aside the order passed by the Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul, in CrI.M.P.No.1411 of 2024 in Special S.C.No.377 of 2023 dated 01.10.2024.



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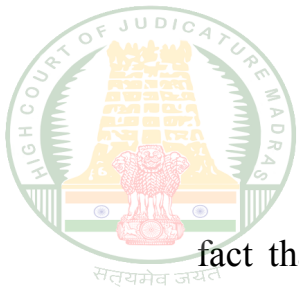
For Appellants : Mr.M.Thiyagarajan
For R1 & R2 : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)
For R3 : Mr.P.M.Vishnuvarthnan

JUDGMENT

This appeal has been filed against the order passed in Crl.M.P.No. 1411 of 2024 in Spl.S.C.No.377 of 2023, dated 01.10.2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul, dismissing the petition filed under Section 311 of Code of Criminal Procedure.

2. The appellants are the accused in Spl.S.C.No.377 of 2023, facing charges under Sections 294(b), 417, 506(i) of IPC, 5(1) & 6 of POCSO Act, 67B(a) of Information Technology (Amendment) Act, 2008 INF C and 3(1)(w)(ii) & 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989.

3. In Spl.S.C.No.377 of 2023, the appellants/accused have filed an application in Crl.M.P.No.1411 of 2024 under Section 311 Cr.P.C for recalling some of the witnesses namely, P.W.1 to P.W.3 on the ground that there is necessity to cross examine the above said witnesses to prove the

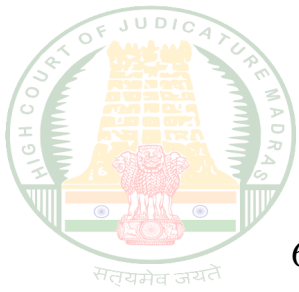


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fact that a false case has been foisted against them. By the order dated 01.10.2024, the learned trial Judge dismissed the said petition on the ground that even though sufficient opportunity was given, the appellants herein failed to cross examine the above said witnesses. Challenging the same, present appeal has been filed.

4. The learned counsel for the appellants submitted that due to the non-availability of important document, they could not cross examine the witnesses on the date of the chief examination. Hence, he prayed to allow this appeal by setting aside the dismissal order passed by the learned trial Judge.

5. The learned Additional Public Prosecutor appearing for the State and the learned counsel for the third respondent/defacto complainant have objection to allow this appeal on the ground that there are totally 13 witnesses. Among 13 witnesses, P.W.1 to P.W.3 have already been examined. Even though sufficient opportunity was given to the appellants, they have failed to cross examine the above said witnesses. Hence, they prayed for dismissal of the appeal by confirming the dismissal order passed by the learned trial Judge.



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6. This Court considered the rival submissions and also perused the records available on record.

7. A cursory perusal of Section 311 Cr.P.C.,) would show that where the evidence appeared to be essential for the just adjudication of a case, a witness could be recalled at any stage of the trial and the Hon'ble Supreme Court in the case of ***Satbir Singh Vs. State of Haryana*** reported in **2023 SCC OnLine SC 1086** has held as follows:-

“As rightly pointed out by the learned Counsel for the appellants, the above petition filed under Section 311 Cr.P.C., not for further cross examination, but for cross-examination itself.”

8. No doubt, the appellants/accused cannot be allowed to recall and cross-examine the witnesses at their whims and fancies, but at the same time, taking note of the fair trial concept, this Court is of the view that the appellants should be given an opportunity to cross-examine the said witnesses and if such permission is granted, as rightly contended by the learned Counsel for the appellants, no prejudice would be caused to the prosecution or the defacto complainant.



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9. This Court is of the clear view that one more opportunity should be given to the appellants to cross-examine the witnesses, but at the same time, this Court is also of the view that the appellants must be mulcted with costs and further condition that the appellants/accused should cross-examine the witnesses on the day when the witnesses are produced before the Court and if for any reason the appellants fail to cross-examine the said witnesses on that particular day, then they will forfeit their rights to cross-examine them.

10. Considering the serious allegation made by the appellants and also considering the nature of allegation, this Court is inclined to give an opportunity to the appellants to cross examine the material witnesses namely, P.W.1 and P.W.2 alone.

11. Accordingly, the dismissal order passed in Crl.M.P.No.1411 of 2024 in Special S.C.No.377 of 2023, dated 01.10.2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul, is hereby set aside and the appeal is partly allowed on the following terms of conditions:-



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(i) The appellants shall pay the amount of **Rs.5,000/- (Rupees Five Thousand) each** to both P.W.1 and P.W.2 within a period of four weeks from the date of receipt of a copy of this order.

(ii) On receipt of payment, the trial Court shall permit the appellants to cross examine the witnesses P.W.1 and P.W.2. If the appellants fail to pay the amount, the trial Court shall proceed further with the materials available, and pass suitable orders.

(iii) The appellants should cross-examine the witnesses whenever the witnesses are produced before the Court.

(iv) In case of the appellants' failure to cross-examine the particular witnesses, then they will forfeit their right of cross-examine of that witnesses.

(v) The Special Court for Exclusive Trial of Cases under POCSO Act, Dindigul, is directed to summon the said witnesses for the purpose of cross examination and complete the examination of the said witnesses within six weeks from the date of receipt of a copy of this order.

21.01.2025

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

- 1.The Special Court for Exclusive Trial of Cases under POCSO Act,
Dindigul.
2. The Deputy Superintendent of Police,
Dindigul Rural, Dindigul District.
- 3.The Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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