

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Petition No.5955 of 2023

Order:

This Criminal Petition, under Section 482 Cr.P.C., has been filed by the petitioner to set aside the order, dated 17.04.2023 in CrI.M.P.No.175 of 2023 in P.S.C.No.11 of 2022 passed by the learned Special Judge for Speedy trial of offences under the Protection of Children from Sexual Offences Act, 2012, Nellore.

2. The petitioner is accused in Crime No.232 of 2020 of Gudur II Town Police Station, registered for the offences punishable under Sections 354 IPC and Sections 18, 10 read with 9(m) of the POCSO Act, 2012. Police after conducting investigation filed charge sheet as against the petitioner on the file of the learned Special Court for Speedy trial of offences under the Protection of Children from Sexual Offences Act, 2012, Nellore and the same was taken on file as P.S.C.No.11 of 2022.

3. Pending trial, the petitioner herein filed a petition under Section 311 Cr.P.C. to recall PW2 for further cross-examination. The petitioner submits that PW2, who is victim girl, has been examined on 20.02.2023 and during the course of her evidence, she deposed several omissions which are material

omissions and due to oversight, the counsel for the petitioner did not put suggestion to PW2 with regard to the material omissions and other aspects. It is submitted that the respondent filed counter stating that there are no material omission in the evidence of PW2 and with an intention to cause inconvenience to PW2, the petitioner filed the petition and prays to dismiss the false, frivolous and vexatious petition in the interest of justice.

4. By the impugned order, dated 17.04.2023, learned Special Judge dismissed the petition on the ground that the petitioner was already given an opportunity to cross examine PW2 and the petitioner has also utilized that opportunity and cross-examined the PW2 at length and no tenable reasons are stated by the petitioner to recall PW2 for the purpose of further cross-examination.

5. Learned counsel appearing on behalf of the petitioner submits that the counsel appearing on behalf of the petitioner has been changed. The new counsel intends to put suggestion in connection with the material omissions that have been made by PW2. Justice should not only be done but it should be seen to be done. Therefore, it is essential that an opportunity should be given to the petitioner herein to cross-examine PW2 on

one occasion since the alleged material omissions will go to the root of the case.

6. In view of the aforesaid reason, the order, dated 17.04.2023 in CrI.M.P.No.175 of 2023 in P.S.C.No.11 of 2022 passed by the learned Special Judge for Speedy trial of offences under the Protection of Children from Sexual Offences Act, 2012, Nellore, is set aside, and consequently, CrI.M.P.No.175 of 2023 stands allowed, with a direction to recall PW2 and permit the petitioner herein to cross-examine PW2 by fixing a specific date within a period of two (2) weeks from the date of receipt of copy of this order. It is further directed that the petitioner shall bear the to-and-fro travelling expenses of the victim girl and attendant of victim girl and shall pay an amount of Rs.3000/- (Rupees three thousand only) to them.

7. Accordingly, with the above direction, the Criminal Petition is disposed of.

As a sequel thereto, the miscellaneous applications, if any, pending in this Criminal Petition shall stand closed.

K. SREENIVASA REDDY, J.

Date:21.08.2023
ARB



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