



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 12TH DAY OF DECEMBER 2022 / 21ST AGRAHAYANA, 1944

CRL.MC NO. 9045 OF 2022

AGAINST THE ORDER DATED 17.08.2022 IN CRIMINAL M.P. NO.
1392/2022 IN SC NO. 224/2019 ON THE FILE OF THE ADDITIONAL
SESSIONS JUDGE-I, KOLLAM

PETITIONER/PETITIONER/ACCUSED:

VINEETH
AGED 32 YEARS, S/O.VIJAYAN,
VINEETH BHAVN, NEAR KOSHNAKAVU,
EDANADU CHERRY, MEENADU VILLAGE,
KOLLAM TALUK, KOLLAM, PIN - 691579

BY ADVS.
P.RAHUL
ASHWIN ANTONY

RESPONDENT/RESPONDENT/STATE:

STATE OF KERALA,
(SHO CHATHANNOOR POLICE STATION, KOLLAM DISTRICT)
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY SMT.T.V.NEEMA, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
12.12.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



ORDER

This Crl.M.C. has been filed to set aside Annexure-A2 order dismissing an application filed under Section 311 of Cr.P.C

2. The petitioner is the accused. He faces trial for the offences punishable under Sections 3D r/w 4 of the POCSO Act.

3. On the side of the prosecution, PWs 1 to 8 were examined. Thereafter, the petitioner filed a petition to recall PW4 and PW6 as Crl.M.P.No.1392 of 2022. The court below after hearing both sides dismissed the same as per Annexure A2 order. The said order is under challenge in this Crl.M.C.

4. I have heard Sri.P.Rahul, the learned counsel for the petitioner and Smt.T.V. Neema, the learned senior Public Prosecutor.

5. PW4 was examined on 17/2/2022 and PW6 was examined on 18/2/2022. Admittedly, at that time, the copy of the 164 statement of PW4 was not made available to the petitioner. He got it only on 21/3/2022. It was thereafter application for recalling the witness was filed in order to contradict the 164 statement with the witnesses. The court below dismissed the application mainly relying on S.33(5) of the POCSO Act on the ground that the child witness cannot be repeatedly



called for examination.

6. Section 311 of Cr.P.C gives wide power to the Magistrate to recall any witness already examined or to summon any additional witness at any stage of the proceedings for the just decision of the case. The bar under Section 33(5) of POCSO Act is not absolute. In appropriate cases, if it is necessary for the just decision of the case, of course the child witness can be recalled. Admittedly when PW4 and PW6 were examined, the petitioner did not receive the 164 statement. The petitioner has every right to contradict the witness with the 164 statement. Hence, I am of the view that recalling of the witnesses is necessary for the just decision of the case.

In the light of the above findings, Annexure-A2 stands hereby set aside. Crl.M.P.No.1392 of 2022 stands allowed. This Crl.M.C is disposed of.

Sd/-

DR.KAUSER EDAPPAGATH, JUDGE

AS

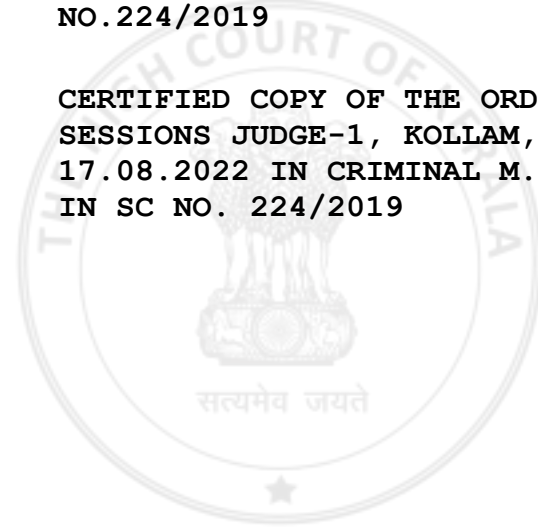


APPENDIX OF CRL.MC 9045/2022

PETITIONER'S ANNEXURES:

ANNEXURE A1 **A TRUE COPY OF THE APPLICATION SUBMITTED
BY THE ACCUSED UNDER SECTION 311 OF THE
CR.PC AS CRL.M.P.NO.1392/2022 IN SC
NO.224/2019**

ANNEXURE A2 **CERTIFIED COPY OF THE ORDER OF ADDL.
SESSIONS JUDGE-1, KOLLAM, DATED
17.08.2022 IN CRIMINAL M.P. NO. 1392/2022
IN SC NO. 224/2019**



**HIGH COURT OF KERALA
CERTIFIED COPY**