

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.5936 of 2017

G. Lilly Mercy ...Petitioner / 1st Accused

Vs.

State represented by
The Inspector of Police,
Kotagiri Police Station,
Nilgiris District.

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order made in CMP No.294 of 2017 dated 06.02.2017 in C.C No.23 of 2013 on the file of the Judicial Magistrate Court, Kotagiri and allow the petitioner to recall PW1, PW2, PW3, PW7, PW8, witnesses for the purpose of cross examination.

For Petitioner : Mr. G.Murugendran

For Respondents : Mr. M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 311 of Cr.P.C. to recall PW1, PW2, PW3, PW7 and PW8 for cross examination.

2. The petitioner is facing trial before the Court below for the offences under Sections 417 and 420 of IPC. The prosecution had examined eight witnesses. The petitioner had filed a petition to recall PW4 and PW6 in C.M.P.No.3808 of 2016 and the same was allowed on 28.11.2016. However, at the time of filing the said petition, the petitioner did not choose to recall PW1, PW2, PW3, PW7 and PW8, who were already examined in chief. Therefore, the Court below had dismissed the petition filed by the petitioner on the ground that the petitioner is intentionally dragging on the proceedings.

3. The learned Additional Public Prosecutor submitted that there is no illegality or infirmity in the orders passed by the Court below and there is also an NBW pending against the petitioner from 07.08.2018 onwards.

4. This Court does not find any illegality or infirmity in the orders passed by the Court below.

5. The petitioner was well aware of the fact that PW1, PW2, PW3, PW7 and PW8 were not cross examined, even when the petitioner filed a petition in C.M.P No.3808 of 2016 to recall and cross examine PW4 to PW6. In spite of the same, the petitioner choose to confine the recall petition only to PW4 to PW6. Thereafter, the petitioner during the month of February 2017, filed a separate petition to recall PW1, PW2, PW3, PW7 and PW8. The Court below had therefore rightly dismissed the petition on the ground that the petitioner only wants to drag on the proceedings.

6. The petitioner has not appeared before the Court below from August 2018 onwards and therefore, there is an NBW pending against the petitioner. This attitude of the petitioner is also taken into consideration by this Court and this Court is not inclined to interfere with the orders passed by the Court below.

7. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C No.23 of 2013 within a period of three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court,
Kotagiri.
2. The Inspector of Police,
Kotagiri Police Station,
Nilgiris District.
3. The Public Prosecutor,
High Court of Madras.

+1 cc to Mr.G.Murugendran, Advocate, S.R.No.55143

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VG-II(CO)
SSM(30/07/2019)



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