

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.No.19984 of 2020

and

Crl.M.P.No.8219 of 2020

1. Manikandan,
S/o, Selvaraj,

2. Velmurugan,
S/o, Selvaraj,

Both are residing at
No.38, Moorthy Street,
Ambadkar Street,
Thirumullaivoyal,
Chennai-600 062.

...Petitioners

-Vs-

State rep by its,
The Inspector of Police,
T10, Thirumullaivoyal Police Station,
Chennai - 600 062.

... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records relating to the proceedings of the order in C.M.P.No.1826 of 2020 in C.C.No.120 of 2015 on the file of the Judicial Magistrate at Ambattur, Chennai and set aside the same.

For Petitioners: Mr.R.muruga Bharathi

For Respondent : Ms.M.Prabhavathi

Additional Public Prosecutor

W E B C O P Y
O R D E R

Assailing the order passed in C.M.P.No.1826 of 2020 in C.C.No.120 of 2015 on the file of the Judicial Magistrate Court, Ambattur, Chennai, the accused have preferred the present Criminal Original Petition.

2. The C.M.P.No.1826 of 2020 has been preferred by the accused to recall P.Ws.1 to 5 for further cross examination and the reason given by the accused for the same is that the earlier

counsel appearing for the accused had not conducted the case and hence the accused engaged a new counsel and the new counsel felt that necessary and relevant questions had to be put to the witnesses on material aspects and hence the need for recalling of P.Ws.1 to 5.

3. The prosecution resisted the abovesaid petition preferred by the accused contending that the prosecution witnesses had been already cross-examined by the accused and the reason given by the accused for recalling them is not valid and acceptable and hence contended that only with a view to delay the proceedings endlessly, the present petition has been laid and sought for the dismissal of the same.

4. The court below, on an appreciation of the rival contentions put forth by the respective parties, was pleased to dismiss the abovesaid petition preferred by the accused. Impugning the same, the Criminal Original Petition has been preferred by the accused.

5. On a perusal of the records placed in the Criminal Original Petition and the impugned order, it is noted that the trial is pending since 2015 onwards and the accused had been charged under sections 294(b), 324 and 506(ii) IPC. The prosecution has examined all the witnesses and only the I.O remains to be examined. It is further noted that the accused had already cross examined P.Ws.1 to 3 by filing a petition to recall them and despite the opportunity provided by the court below on the earlier occasion, the accused, at the first instance, not endeavored to examine P.Ws.1 to 3 and consequently NBW had been issued against them and only thereafter, i.e., after the recalling of NBW, they had chosen to cross examine P.Ws.1 to 3 and furthermore, when P.Ws.4 and 5 were examined, the accused had not endeavored to cross examine them, despite adequate opportunities provided to them for the same and the new counsel engaged by the accused had also examined P.W.5 and subsequently, the accused had engaged another counsel and preferred the present petition to recall P.Ws.1 to 5. As rightly held by the court below, the accused cannot be allowed to recall the prosecution witnesses at their whims and fancies that too without acceptable and valid reason. When the witnesses sought to be recalled by the accused had already been cross examined as above pointed out, the accused cannot be permitted to recall the witnesses as and when they engage a new counsel in support of their defence version. The change of counsel is not a ground to recall the witnesses for cross examination. As rightly found and held by the court below, the piecemeal examination of the witnesses should be highly deprecated. Resultantly, the court below is found to be justified in holding that the petition preferred by the accused

lacks merits and the same had been laid only with the aim of delaying the proceedings endlessly and therefore, is right in dismissing the petition preferred by the accused.

6. In the light of the abovesaid factors, I do not find any error or infirmity in the impugned order passed by the court below. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mfa
To

1. The Inspector of Police,
T10, Thirumullaivoyal Police Station,
Chennai - 600 062.
2. The Judicial Magistrate
Ambattur

Crl.O.P.No.19984 of 2020
and
Crl.M.P.No.8219 of 2020

RSV(CO)
SP(19/01/2021)

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