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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.21425 OF 2021

AND

CRL.M.P.NO.11579 OF 2021

G.Arun @ Arunkumar

... Petitioner/Accused 5

Versus

The State Rep. by
The Inspector of Police,
CBCID Namakkal,
Pallipalayam P.S,
Cr.No.310/2010

... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside order passed in Crl.M.P.No.1618 of 2021 dated 01.10.2021 in S.C.No.69/2012 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal.

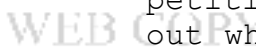
For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.R.Vinothraja
Government Advocate(Crl. Side)

Mr.K.B.Pachaiyappan
For Defacto-Complainant

O R D E R

The petitioner/A5 who is facing trial in S.C.No.69 of 2012 for the offences punishable under Sections 120-B, 341, 148, 302, r/w 149, 302 r/w 120-B IPC had filed the petition in C.M.P.No.1618 of 2021 under Section 311 Cr.P.C to recall P.W.1 for further cross examination on the side of the petitioner/5th accused. The Trial Court by an order dated 01.10.2021



2. The contention of the learned counsel appearing for the petitioner is that in this case, some vital aspects were left out when P.W.1 was earlier cross examined by the counsel for the petitioner, which are necessary for the decision of the case and therefore filed the petition to recall P.W.1, but the Lower Court, without considering the same has dismissed the petition on the ground that the case is pending from 2012 and the earlier petition to recall P.W.1 was dismissed on merits and the reason for further cross examination has not been mentioned, which are not acceptable. It is the further contention of the learned counsel for the petitioner that final report was filed on 29.06.2021 and thereafter the case was transferred to the Sessions Judge, Fast Track Mahila Court, Namakkal and the matter was stayed by this Court from 06.1.2017 to 10.01.2019 and subsequently the stay was vacated and thereafter proceedings were commenced. He further submitted that the witness were examined on 21.11.2019 and thereafter due to covid situation, the trial could not be commenced from 22.04.2020 to 01.09.2020. He further submitted that on 05.03.2021, the prosecution side evidence was closed and questioning under Section 313 (1)(b) was completed on 10.03.2021 and again from 25.05.2021 to 30.07.2021, lockdown was enforced and thereafter physical hearing was stayed and proceedings were commenced from 31.07.2021 and now the proceedings were going on and therefore he has filed the petition to recall P.W.1 only to prove his innocence and not to drag on the proceedings.

3. The learned Government Advocate (Crl.side) submits that in this case the petitioner had earlier filed a petition under Section 311 Cr.P.C. in C.M.P.No.921 of 2019 which was dismissed on 11.06.2020 and thereafter on the same ground without any change of circumstances in the material the petition in Crl.M.P.No.1618 of 2021 was filed. The Lower court has given valid and detailed reasons, while dismissing the petition and therefore the same need not be interfered with. He therefore strongly opposed for recall of P.W.1.

5. A perusal of records would go to show that in this case P.W.1 was examined on 05.03.2019 and thereafter subsequent witnesses have been examined and so far 30 witnesses have been examined and the investigating officer was lastly examined. The accused were questioned under 313 Cr.P.C. on 10.03.2021. D.W. 1 and D.W.2 were examined and the case has been posted for examination of D.W.3 and 25.11.2021. Further the earlier petition filed to recall P.W.1 was dismissed on 11.06.2020 and



without any change in circumstances, the petition in CrI.M.P.No.1618 of 2021 was filed and the Lower Court has given detailed reasons, while dismissing the petition and therefore the same does not warrant interference.

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6. In view of the same, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.
2. The Inspector of Police,
CBCID Namakkal,
Pallipalayam P.S,
Cr.No.310/2010
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sheik Ismail, Advocate, S.R.No.60619

CRL.O.P.NO.21425 OF 2021

MG (CO)
PBS/08/12/2021