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CrI.O.P.(MD)No.18270 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P. (MD)No.18270 of 2021

and CRL.M.P. (MD)No.10042 of 2021

Kalithas

... Petitioner/ Petitioner /
Accused No.2

Vs.

State through,
The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
(Crime No.22 of 2010)

... Respondent / Respondent /
Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the order passed in CrI.M.P.No.3214 of 2021 in C.C.No.148 of 2015, dated 28.09.2021 on the file of the learned Judicial Magistrate No.II(FAC), Sivagangai and set aside the same.

For Petitioner	: Ms.P.Sepana @ Sree
For Respondent	: Mr.M.Sakthi Kumar, Government Advocate.

O R D E R

Heard the learned counsel on either side.

2. The petitioner is facing trial in C.C.No.148 of 2015 on the file of the Judicial Magistrate No.II(FAC), Sivagangai. The first accused in this case has already passed away and the proceedings have abated against him. The prosecution examined P.W.1 to P.W.9. The trial commenced way back in March 2020. All the nine witnesses were examined on 18.02.2020. The petitioner did not choose to cross examine the prosecution witnesses. He filed Cr.M.P.No.3214 of 2021 for recall of the said witnesses only on 10.08.2021. No reason has been set out in the said petition for the failure to cross examine the prosecution witnesses, after they were examined in chief. That is why, the Court below had held that without giving any reason, the petitioner cannot casually file such an application. The Court below had also referred to the decision of the Hon'ble Supreme Court reported in 2016 (2) SCC 402 (AG V. Shiv Kumar Yadav and another) for holding that the power under Section 311 of Cr.P.C. must be invoked by the Court in order to meet the ends of justice for strong and valid reasons and the same must be exercised with



care, caution and circumspection. If the present petition is mechanically accepted, that would only cause unnecessary harassment to the witnesses.

3. In this case, the First Information Report was registered way back in the year 2010. Charges were framed and cognizance was taken in the year 2015. The chief examination of the prosecution witnesses was concluded in February 2020. The recall petition was filed by the accused in 2021. In the said petition, absolutely no reason has been set out. The trial Court had rightly denied relief to the petitioner.

4. I do not find any ground to interfere. Therefore, the order impugned in this petition is confirmed. This criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Judicial Magistrate No.II(FAC), Sivagangai

2.The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P. SEPANA @ SREE, Advocate (SR-35548[F] dated 23/11/2021)

CrI.O.P.(MD)No.18270 of 2021
23.11.2021

TSK(CO)

KB(01.12.2021) 2P 5C

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