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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.1356 OF 2022

AND

CRL.M.P.NO.534 OF 2022

Senthilkumar

...Petitioner / Accused

Vs.

State by
The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore District.
(Crime No.38 of 2015)

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in C.M.P.No.4109 of 2021 in S.C.No.56 of 2021 on the file of the Magalir Neethimandram, Mahila Court, Coimbatore, dated 16.12.2021.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed in C.M.P.No.4109 of 2021, in S.C.No.56 of 2021, on the file of the Magalir Neethimandram, Mahila Court, Coimbatore, dated 16.12.2021.

2.The contention of the petitioner is that the petitioner had filed C.M.P. No.4109 of 2021, under Section 311 Cr.P.C., stalling LW1's examination even before LW1's examination has commenced. There had been love affair between the petitioner and LW4, victim girl, later, the same not fructified as marriage, for which, the petitioner is facing trial in Crime No.38 of 2015, for the offences under Sections 417, 376(1) & 406 IPC. LW4 is an employee at London and the entire facts rest on the evidence of LW4. In view of the same, before examining LW4,



examination of LW1, mother of the victim, LW2 father of the victim and LW3 sister of the victim would only expose the defence of the petitioner, if the petitioner is compelled to examine these witnesses.

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3. The learned Additional Public Prosecutor submits that the petitioner's apprehension and filing of petition under Section 311 Cr.P.C. is not maintainable. There is a specific provision under Section 231(2) Cr.P.C. which ought to have been invoked by the accused to defer cross examination of any other witness and not under Section 311 Cr.P.C. In this case, trial is yet to be commenced. He further submits that knowing that LW4 is presently at London, to delay and drag on the trial proceedings, this petition has been filed. Further, it is the prerogative of the prosecution to examine any number of witnesses and in any order. The petitioner cannot have a prayer in which order or in which manner, witnesses have to be examined by the prosecution. In this case, the trial has not yet commenced. Further submits that the order of production and examination of the witnesses cannot be determined by the petitioner as per section 135 of Indian Evidence Act and it is for the Court to decide. The lower court ought not to have entertained the same without passing a detailed order, which made the petitioner to reach this Court which can be avoided at the initial stage itself.

4. Finding no merits in the contention of the petitioner, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

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To

1. The Judge,
Magalir Neethimandram,
Mahila Court,
Coimbatore.
2. The Inspector of Police,
All Women Police Station,
Thudiyalur,
Coimbatore District.
(Crime No.38 of 2015)



3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Kumarasamy, Advocate Sr.No.4434

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GJ(CO)
RVM(09/02/2022)