



WEB COPY



Crl.O.P.No.24772 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2022

PRONOUNCED ON : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.24772 of 2022

Mythili

... Petitioner

/vs/

The Inspector of Police,
Belukurichi Police Station,
Namakkal.
(Crime No.55 of 2010)

... Respondents

Prayer : This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 03.05.2021 made in Crl.M.P.No.769 of 2021 in C.C.No.152 of 2020 on the file of the Judicial Magistrate, Sendamangalam.

For Petitioner ... Mr. J. Jayan

For Respondents ... Mr. E. Raj Thilak,
Additional Public Prosecutor



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ORDER

WEB COPY Challenging the impugned order passed by the learned Judicial Magistrate in CMP No.769 of 2021, dated 03.05.2021, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as accused in C.C.No.152 of 2020 prosecuted by the respondent police in Crime no.55 of 2010 for having committed the offence punishable under Section 380 r/w.34 of IPC and she was prosecuted along with 6 other accused in C.C.No.115 of 2010, in which when this petitioner was in judicial custody in connection with other case, 13 witnesses were examined on the side of the prosecution, viz., P.Ws.1 to 13. Therefore, she was not able to cross examine the above said witnesses. Hence, she filed the petition in C.M.P.No.769 of 2021 for recalling the prosecution witnesses, viz., P.Ws.1 to 9 and P.Ws.11 to 13, which was dismissed by the Trial Court by passing the impugned order on the ground that P.W.1 is aged about 67 years, P.W.5 is aged about 60 years, P.W.6 is aged about 53 years and P.W.15 is aged about 55 years and they were examined 12 years back, i.e., in the year 2010 and recalling that witnesses for the purpose of cross



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examination is unsustainable. Aggrieved over the same, the present petition has been filed.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, this accused is prosecuted by the respondent police along with six other accused for the offence punishable under Section 380 r/w. 34 of IPC in the original case in C.C.No.115 of 2010, in which, P.Ws.1 to 3 were examined on 16.04.2010, P.W.4 was examined on 19.04.2010, P.W.5 was examined on 21.04.2010, P.W.6 was examined on 23.04.2010, P.Ws.7 to 9 were examined on 07.05.2010, P.Ws.10 & 11 were examined on 14.06.2010, P.W.12 was examined on 09.06.2010 and P.W.13 was examined on 14.06.2010. Since the petitioner/accused was absconded, the case against her was split up from the above said original case and new number has been assigned as C.C.No.152 of 2020. Since the witnesses were examined in the year 2010, after a long period, recalling the prosecution witnesses are impermissible and there is no bonafide on the part of the petitioner. Hence, pleaded to dismiss the petition.



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4. I have considered the matter in the light of the submissions made by the learned counsel for both the parties.

5. On a perusal of the records, it is seen that the petitioner is arrayed as A1 in C.C.115 of 2010 on the file of the Judicial Magistrate, Rasipuram and the same was taken on file on 25.03.2010. The respondent police prosecuted the petitioner/A1 along with 6 other accused for having committed the offence under Section 380 r/w. 34 of IPC. In the above said case, on 16.04.2010, P.Ws.1 to 3 were examined by the prosecution, on that date, all the accused, including the petitioner, stated no cross. Further on 19.04.2010, P.W.4 was examined and he was cross examined by A2 and A6, which was adopted by A7. Thereafter, on 21.04.2010, P.W.5 was examined and crossed examined by A2 and A6 and A3 to A5 & A7 stated no cross. Subsequently, on 23.04.2010, P.W.6 was examined and all the accused represented no cross. On 07.05.2010, P.Ws.7 to 9 were examined and P.W.9 was cross examined by A2, A6 & A7. On 09.06.2010 & 14.06.2010. P.Ws. 10 to 13 were examined. Thereafter, the case was posted for 313 Cr.P.C. proceedings. After hearing the argument, the case was posted for



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judgment. At that stage, since the petitioner/A1 was not appeared during the examination of witnesses, NBW was issued against her and the case as against this petitioner/A1 was split up and taken on file as C.C.No.152 of 2020. Now, after a long period of 12 years seeking to recall for the purpose of cross examination of prosecution witnesses is unsustainable and also against the principles of the decision rendered by the Hon'ble Supreme Court in the case of *Vinod Kumar /vs/ State of Punjab [AIR 2015 SC 1206]*. It also does not meet the parameters laid down by the Hon'ble Supreme Court in the case of *Rajaram Prasad Yadav /vs/ State of Bihar and another [AIR 2013 SC 3081]* for recalling the prosecution witnesses. Hence, I find no reason to interfere in the dismissal order passed by the Trial Court and I find no merit in this petition and hence, this petition is liable to be dismissed.

6. Accordingly, this Criminal Original Petition is dismissed.

31.10.2022

mrp

Index : yes/no

Internet ; Yes/no



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WEB COPY To

1. The Inspector of Police,
Belukurichi Police Station,
Namakkal.
2. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM,J.

mrp

Pre-Delivery Order
in
Crl.O.P.No.24772 of 2022

31.10.2022