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CrI.O.P.No.1273 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.1273 of 2023

and

CrI.M.P.No.737 of 2023

E.Kalamani

... Petitioner

Vs.

The State Represented by
The Inspector of Police,
CCB Police Station,
Tiruppur.
(Crime No.19 of 2019)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order dated 06.12.2022 made in E.CrI.M.P.No.10962 of 2022 in S.C.No.522 of 2022 on the file of Chief Judicial Magistrate, Tiruppur.

For Petitioner : Mr.E.Elendevan Chandran Jeyabalan
For Respondent : Mr.S.Santhosh
Government Advocate (CrI.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 06.12.2022 made in E.CrI.M.P.No.10962 of 2022 in S.C.No.522 of 2022 on the



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file of the learned Chief Judicial Magistrate, Tiruppur.

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2. Learned counsel for the petitioner submitted that, the petitioner had filed a petition under Section 311 Cr.P.C for recalling PW1 to PW14. However, that petition was dismissed, necessitating filing of this petition. He further submitted that, if the petitioner is not permitted to cross examine PW1 to PW14, their testimony could not be tested and the petitioner would be denied the opportunity of establishing her innocence. The natural justice requires that the opportunity must be given for cross examination of the witnesses.

3. In response, learned Government Advocate submitted that, out of 18 witnesses, 17 witnesses had been examined. There are totally two accused in this case. Both the accused have not immediately cross examined the prosecution witnesses, once their chief examination was recorded. 2nd accused filed petition for recalling PW1 to PW9 and that was allowed. 2nd accused had also cross examined PW1 to PW9. However, 1st accused had deliberately omitted to cross examine these witnesses and he was absent. Therefore, non-bailable warrant was pending against her. When the trial is reaching its final stage, this petition is filed only to drag on the proceedings. Thus, he prays for



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dismissal of this petition.

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4. Considered the rival submissions and perused the records.

5. It is seen from the Order dated 06.12.2022 made in E.Crl.M.P.No.10962 of 2022 in S.C.No.522 of 2022, passed by the learned Chief Judicial Magistrate, Tiruppur that, PW1 to PW9 were examined in chief on various dates, but they were not cross examined by the accused, then and there. 2nd accused filed a petition to recall PW1 to PW9 and it was allowed on 24.09.2021. The Court also insisted the petitioner/1st accused to file petition under Section 311 Cr.P.C simultaneously, when the 2nd accused filed recalling petition, to avoid dragging of witnesses again and again. However, petitioner had not done that. On the basis of Section 311 Cr.P.C. petition filed, PW1 to PW8 were cross examined on 26.10.2021 and PW9 was also present and cross examined by the 2nd accused on 10.11.2021. The case pending for examination of Investigating Officer. The 1st accused deliberately remained absent and non-bailable warrant was issued. Thereafter, non-bailable warrant was executed and petitioner was remanded to Judicial custody. After getting bail, this petition is filed to drag on the proceedings.



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6. In such view of the matter, the trial Judge found no merits in the petition and dismissed the petition.

7. This Court, on going through the Order dated 06.12.2022 made in E.Crl.M.P.No.10962 of 2022 in S.C.No.522 of 2022 passed by the learned Chief Judicial Magistrate, Tiruppur and reasons given for dismissal, finds that, petitioner had deliberately omitted to cross examine PW1 to PW14.

8. It appears that petitioner and 2nd accused are spouses and are delaying the trial process by not cross examining the witnesses and then 2nd accused filed 311 Cr.P.C. petition and now petitioner filed 311 Cr.P.C petition. Therefore, this Court finds that the attempt made by the petitioner and 2nd accused to drag the proceedings and delaying the delivery of justice cannot be appreciated. It is settled position that witnesses have to be examined in chief and cross examined on the same day. It has been reiterated by Hon'ble Supreme Court of India in the case of *Mukesh Singh Vs. The State of Uttar Pradesh and another* reported in [2022 Livelaw SC 826].



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9. In such view of the matter, this Court finds that the Order dated 06.12.2022 made in E.Crl.M.P.No.10962 of 2022 in S.C.No.522 of 2022 on the file of Chief Judicial Magistrate, Tiruppur is confirmed. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

23.01.2023

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Index:Yes/No

Speaking Order: Yes/No

To

1.The Chief Judicial Magistrate,
Tiruppur.

2.The Inspector of Police,
CCB Police Station,
Tiruppur.

3.The Public Prosecutor,
Madras High Court.



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G.CHANDRASEKHARAN.J.,
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