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Crl.OP.No.1224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.1224 of 2023

and

Crl.M.P.No.649 of 2023

Elamparuthi

... Petitioner

Vs.

State by Inspector of Police,
Shevpet Police Station, Salem City.
Crime No.558 of 2010

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set-aside order dated 03.01.2023 passed in Crl.M.P.No.562 of 2022 in S.C.no.276 of 2010 on the file of II Additional District Judge, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to set-aside order dated 03.01.2023 passed in Crl.M.P.No.562 of 2022 in S.C.no.276 of 2010 on the file of II Additional District Judge, Salem.



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2. The learned counsel for the petitioner submitted that petitioner filed petition under Section 311 of Cr.P.C to recall PW3 to PW7 and PW12, PW13, PW15 for the purpose of further cross-examination. The reason for seeking further cross-examination is to enlighten the Court that the petitioner is innocent and no case is made against him. Subsequently, petitioner had not pressed his request for PW5,6,7 and confined his prayer only with reference to PW3,4,12,13,15. However, without considering the genuine request of the petitioner, learned Judge dismissed the petition. Challenging the dismissal order, present petition is filed.

3. It is his further submission that these witnesses had not been cross-examined effectively by the petitioner. Unless the petitioner is given an opportunity for further cross-examination of these witness, his interest would be seriously prejudiced.

4. In response, learned Government Advocate (Crl. Side) submitted that, out of thirty nine witnesses, thirty four witnesses had been examined. This case is posted for further witnesses on 24.01.2023. All these witnesses had been examined in the year 2014. The recall petition is filed in the year 2022. He



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further submitted that the recall petition is filed only to protract the proceedings. Therefore, learned Trial Judge correctly dismissed the petition.

5. Considered the rival submissions and perused the records. The perusal of the order of the learned Judge and the relevant records shows that there are two accused in this case and they had been charged for the offences under Sections 363, 364, 302 and 404 of IPC. The date of occurrence was 05.04.2010 and the case was taken on file on S.C.No.276 of 2010. It is further seen in the order that this case is one of the oldest pending case on the file of the learned II Additional District Judge, Salem. The learned Judge also found that PW3 was examined in chief on 30.07.2014 and briefly cross-examined by the accused on 05.08.2014. Similarly, PW4 was examined in chief on 30.07.2014 and briefly cross-examined by the accused on 05.08.2014 and PW12 was examined in chief on 31.07.2014 and briefly cross-examined by the accused on same day. PW13 was examined in chief on 31.07.2014 and on the same day, counsel for the accused submitted no cross for the reason that the expert deposed no poison or alcohol found in the inner parts of the deceased. PW15 was examined in chief on 31.07.2014 and was briefly cross-examined by the accused on the same day. Thus it is clear from the order of the learned



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Judge that PW3,4,12, 15 had been cross-examined during the year 2014 and were crossly examined briefly by the petitioner. The learned Judge relied on the Judgement of the **Hon'ble Supreme Court of India** made in **Vinoth Kumar Vs State of Punjab – 2015(3) SCC – 220** in Crl.A.No.554 of 2012, the relevant portion reads as follows:

“when the Prosecution side witnesses are appeared before the Court, the witnesses should be cross-examined on the same day, if time not permitted the cross continuation should not be granted”

7. In the case before hand, these witnesses had been already cross-examined in brief. Present petition is filed after a lapse of eight years for the purpose of further cross-examination is nothing but an attempt to protract the disposal of the trial. Therefore, this Court finds no reason to interfere with the order of the learned Judge passed in Crl.M.P.No.562 of 2022. Thus, order of the learned Judge in confirmed.



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WEB COPY 8. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

20.01.2023

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To

1. II Additional District Judge,
Salem.
2. Inspector of Police,
Shevpet Police Station, Salem City.
3. The Public Prosecutor,
High Court of Madras, Chennai.



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G.CHANDRASEKHARAN,J.

Sma

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