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Crl.M.P.No.1113



Crl.M.P.No.1113 of 2023

in

Crl.A.No.383 of 2020

P.VELMURUGAN,J.

When the main appeal came up before this Court on 06.01.2023, the learned counsel for the appellant sought permission of this Court to peruse the records. Therefore, this Court called for records and permitted the counsel for the appellant to peruse the records and instructed him to argue the matter on the next hearing.

2. Today (25.01.2023) when the matter came up before this Court, instead of arguing the appeal, the counsel for the appellant/accused has filed the present petition and would submit that the Form 91 was not marked before the trial Court during trial. He would further submit that already approval was granted by the CMDA and the appellant/accused was nothing to do with the work to be done by the defacto complainant. Therefore, in order to secure the ends of justice, the appellant/accused himself wanted to be examined as defence side witness under Section 315 Cr.P.C. Hence, the appellant/accused may be permitted to examine as defence witness and his evidence may be treated as additional evidence. He also referred Section 391 Cr.P.C.

3. Heard the learned counsel for the appellant/accused and perused the records.



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4. There is no quarrel with the proposition of law that the accused is a competent witness. Admittedly, if an accused wanted to be examined as defence side witness, he can invoke Section 315 Cr.P.C. and with the permission of the Court, he can get into the box and let his evidence. Further, if any document is inadvertently omitted to be marked before the Court or if any document was able to secure only subsequent to the trial and which was not able to produce before the trial Court during trial, one can invoke Section 391 Cr.P.C. to mark the said document as additional evidence at any stage. If the Court thinks it necessary, the Court can permit to take additional evidence otherwise it may not, whereas in this case, the cause of action arose in the year 2009 and after investigation, the case was tried in the year 2012 and was disposed of on 17.09.2020. Subsequently, the appeal also filed before this Court.

5. A perusal of the proceedings under Section 313 Cr.P.C. shows that several opportunities were given to the appellant/accused and he also all along participated in the trial and after completion of evidence, he was questioned under Section 313 Cr.P.C. on 22.01.2019. At that time, he has stated that he has witness. But he did not produce any witness. Subsequently, the counsel who appeared for the appellant/accused before the trial Court, made endorsement that there was no further evidence from the defence and based on the endorsement made by the counsel who appeared on 01.02.2019, the trial was closed. Even the counsel for the appellant/accused also filed a written arguments on behalf of the appellant/accused and requested the Court to take



the written submission as part and parcel of his submission and defence. Therefore, the trial Court proceeded with the arguments of the prosecution and delivered the Judgment on 17.09.2020. Thereafter, the present appeal was filed before this Court.

6. As stated above, every opportunity was given to the appellant/accused before the trial Court and he also all along participated with the trial proceedings and entered appeared through counsel. But he did not file any application invoking Section 315 Cr.P.C. before the trial Court. Even in the present petition filed before this Court invoking Section 315 Cr.P.C., he has not given any valid reason as to why he had not filed the petition invoking Section 315 Cr.P.C. before the trial Court.

7. Though the appellate Court has power to take additional evidence in a suitable case, such power should not be exercised to fill up gaps. When enough opportunities were given before the trial Court and subsequently, if the parties make any attempt to fill up the lacuna in evidence or to delay the appeal, the appellate Court shall not permit to do the same and the same can be rejected.

8. Accordingly, this Criminal Miscellaneous Petition is dismissed.

9. Post the main appeal on 20.02.2023.

25.01.2023

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Note: Issue order copy on 30.01.2023

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