



Crl.O.P.No.4916 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.4916 of 2023

and

Crl.M.P.No.3069 of 2023

Garden Super Market,
Mr.O.V.Ajith Kumar,
S/o.A.Ananthan,
Aged about 50 years,
Thankam Nivas,
P.O.Chirkkal, Chirakkal R.S,
Kannur – 670 011.

... Petitioner

Vs.

P.S.Security Agency,
Represented by its Proprietor Mr.P.Surendran,
No.S-5, TNHB shopping complex,
Opp to Dr.Ambedkar Colleged,
Vyasarpadi, Chennai – 600 039
Represented by Power Holder Mr.S.Pranav

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the orders made in Crl.M.P.No.24158 of 2022 in C.C.No.2895 of 2018 vide order dated 19.12.2022 on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Egmore at Alikulam, Chennai and set aside the same and all the allow petition to eschew the additional evidence adduced by PW1.



WEB COPY



Crl.O.P.No.4916 of 2023

For Petitioner : Mr.S.T.Raja
For Respondent : Mr.K.Raja

ORDER

This Criminal Original Petition has been filed to call for the records relating to the orders passed in Crl.M.P.No.24158 of 2022 in C.C.No.2895 of 2018, vide order dated 19.12.2022, on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai and set aside the same and eschew the additional evidence adduced by PW1.

2. It is submitted by the learned counsel for the petitioner that, after examination of PW2, PW1, without filing a formal petition for reopening his evidence for the purpose of filing additional proof affidavit, filed additional proof affidavit and marked certain documents. No opportunity was given to the petitioner to object the filing of additional proof affidavit and marking of additional documents. Now, the case is posted for arguments.



Crl.O.P.No.4916 of 2023

WEB COPY

3.The learned counsel for the respondent submitted that respondent filed counter in the eschew petition. Copy of the additional proof affidavit was served on the petitioner and petitioner did not protest, in any manner, at the time of receiving the additional proof affidavit and marking the additional documents. It means that petitioner has given consent for filing additional proof affidavit and marking the additional documents. Therefore, it is now not open to the petitioner to challenge the filing of additional proof affidavit and marking of documents.

4.Considered the rival submissions and perused the records.

5.The main grievance of the petitioner is that without filing any petition under Section 311 Cr.P.C., additional proof affidavit was received and certain documents were marked. When a query was raised by this Court as to whether any objection was raised while receiving the additional proof affidavit filed by the respondent, the learned counsel for the petitioner conceded that no objection was raised. Though it is necessary that a petition under Section 311 Cr.P.C. is required to be filed



Crl.O.P.No.4916 of 2023

WEB COPY

for recalling a witness, Section 311 Cr.P.C. empowers any court to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

6. Admittedly, in this case, petition under Section 311 Cr.P.C. was not filed. However, the learned Metropolitan Magistrate chose to permit the recalling of PW1 for further examination with the reception of additional proof affidavit and additional documents. Objection was not raised by the petitioner while receiving the copy of the additional proof affidavit and marking the additional documents. Therefore, it is not, as rightly pointed out by the learned counsel for the respondent, open to the petitioner to raise the issue now. It may be an irregular act, but not an illegal act. When PW1 was already further examined in chief and documents were marked, we cannot set the clock back. Therefore, this Court does not want to interfere with the order of the learned Metropolitan



Crl.O.P.No.4916 of 2023

Magistrate and this petition is dismissed.

WEB COPY

7. Accordingly this petition is dismissed. Consequently, connected miscellaneous petition is also closed.

07.06.2023

sli

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

The Metropolitan Magistrate,
Fast Track Court No.1,
Egmore at Alikulam, Chennai.



WEB COPY



Crl.O.P.No.4916 of 2023

G.CHANDRASEKHARAN, J.
sli

Crl.O.P.No.4916 of 2023
and
Crl.M.P.No.3069 of 2023

07.06.2023