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Crl.O.P.No.17452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17452 of 2023

1. Viswanathan
S/o.Murugaiyan

2.Dinakaran
S/o.Nallaiyan

.. Petitioners

Vs.

STATE : Represented By,
Inspector of Police,
District Crime Branch,
Thiruvarur District.
(Cr.No.2 of 2000)

.. Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside and modify the order passed in Crl.M.P.No.6857 of 2022 by Judicial Magistrate – I, Mannargudi, directing them to pay cost of Rs.10,000/-(Rupees Ten Thousands only) to each of the witnesses P.Ws. 2, 3 and 8 in C.C.No.109 of 2004 on the file of the Judicial Magistrate I, Mannargudi, Tiruvarur District.

For Petitioners : Mr.Swamisubramanian
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



Crl.O.P.No.17452 of 2023

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below in Crl.M.P.No.6857 of 2022 allowing the application filed for recalling certain witnesses for cross-examination by imposing costs of Rs.10,000/- payable to each witness.

2. Heard Mr.Swamisubramanian, learned counsel for petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. It is seen from records that the petitioners had filed Crl.M.P.No.6856 of 2022 to recall PWs.2, 3, 5, 6 and 14 in C.C.No.108 of 2004 and this petition was allowed by the Court below by imposing cost of Rs.10,000/- payable to each witness. The same was put to challenge before this Court in Crl.O.P.No.31244 of 2022 and this Court, by order dated 19.12.2022, reduced the cost payable from Rs.10,000/- to Rs.2,500/- for each witness.



4. The petitioners filed yet another petition in Crl.M.P.No.6857 of 2022 to recall PWs.2, 3 and 8 in C.C.No.109 of 2004. This petition was also allowed by the Court below by directing the petitioner to pay cost of Rs.10,000/- to each witness. This order was put to challenge before this Court in Crl.O.P.No.31492 of 2022. This petition was withdrawn by learned counsel for petitioners and recording the same, the said Criminal Original Petition was also dismissed on 20.12.2022.

5. This Criminal Original Petition has again been filed challenging the very same order passed in Crl.M.P.No.6857 of 2022. In the considered view of this Court, the present petition by itself amounts to an abuse of process of Court. It is true that the Apex Court in ***Anil Khadkiwala v. State (Government of NCT of Delhi and another)*** [(2019) 3 MWN (Crl.) DCC 97 (SC)] has held that a second quash petition can be maintained before the Court u/s.482 Cr.P.C. However, while passing such an order, the Apex Court never intended to encourage Bench hopping. If filing of a second quash petition on the same cause of action is permitted without any control, a counsel can always withdraw the first quash petition before an inconvenient Bench and later, move yet another quash petition before a



Crl.O.P.No.17452 of 2023

Judge, who is more relief oriented. If this is allowed, there will no end in filing quash petitions before the Court and it will clearly result in abuse of process of Court. This can never be entertained by this Court and entertaining a second quash petition will be done only in exceptional cases where it is warranted.

6. The instant case is a classic example of how a second quash petition is filed before a different Bench when the earlier quash petition for the very same cause of action was withdrawn on an earlier occasion. This Court does not find any merits to entertain this second quash petition. It was also brought to the notice of this Court by learned Additional Public Prosecutor that the final arguments are over and the matter is posted for passing judgment.

In the result, this Criminal Original Petition stands dismissed.

03.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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Crl.O.P.No.17452 of 2023

To
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- 1.The Judicial Magistrate I,
Mannargudi.
2. The Inspector of Police,
District Crime Branch,
Thiruvarur District.
- 3.The Public Prosecutor
High Court of Madras,
Madras.



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Crl.O.P.No.17452 of 2023

N.ANAND VENKATESH, J

gm

Crl.O.P.No.17452 of 2023

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