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Crl.OP.No.6021 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.6021 of 2023

and

Crl.M.P.No.3777 of 2023

1. Appukutty @ Sathish Kumar

2. Vinoth @ Vinoth Kumar

... Petitioners

Vs.

State Rep.by,
Inspector of Police,
Vellore North L & O Police Station,
Vellore District.
Crime No.157 of 2015

...Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 20.12.2022 made in Crl.M.P.No.135 of 2022 in S.C.No.178 of 2015 on the file of Assistant Sessions Judge/ Principal Sub Judge, Vellore.

For Petitioner

: Mr.C.S.Saravanan

For Respondent

: Mr.S.Santhosh (For R1 to R3)
Government Advocate(Crl.side)



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ORDER

This Criminal Original Petition has been filed to set aside the order dated 20.12.2022 made in Crl.M.P.No.135 of 2022 in S.C.No.178 of 2015 on the file of Assistant Sessions Judge/ Principal Sub Judge, Vellore.

2. The learned counsel for the petitioner submitted that, petitioner filed petition under Section 233(3) of Cr.P.C., for the purpose of cross-examination of PW1 to PW10. The reason stated for filing the petition is that, PW1 to PW10 could not be cross-examined due to ill health of the counsel for the petitioner. The petition came to dismissed by the learned Assistant Sessions Judge/Principal Sub Judge, Vellore vide Crl.M.P.No.135 of 2022 dated 20.12.2022. Challenging the dismissal order, present petition is filed.

3. In response, learned Government Advocate (Crl. Side) submitted that, S.C.No.178 of 2015 is pending from the year 2015. Recording of evidence was completed and the case was pending for arguments and at that point of time, this petition was filed. The trial Judge finding that, petitioner already filed petition under Section 311 of Cr.P.C and that was dismissed on merits, again,



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filed petition in Crl.M.P.No.16 of 2020 under Section 311 of Cr.P.C., to recall PW1 to PW3 and PW10 and that was closed for the reason that, NBW was pending against the petitioner. Thus, he pray for dismissal of the petition.

4. Considered the rival submissions and perused the records. It is seen from the petition that the only reason for not cross-examining PW1 to PW10 is that, due to the ill health of the petitioner's counsel. PW1 to PW10 were not examined on single day and therefore the reason stated that, PW1 to PW10 were not cross-examined because of the ill health of the counsel for the petitioner cannot be accepted. It is seen from the order of the learned Judge that, petitioner filed Crl.M.P.No.206 of 2019 under Section 311 of Cr.P.C for recalling PW1 to PW10 and that was dismissed on 22.11.2019 on merits. Subsequently, petitioner filed petition in Crl.M.P.No.16 of 2020 under Section 311 of Cr.P.C., to recall PW1 to PW3 and PW10 and that was closed for the reason that, NBW was pending against the petitioner. Now, present petition is filed under Section 233(3) of Cr.P.C., for summoning PW1 to PW10 for the purpose of cross-examination. The learned Judge relied on the judgment of the Hon'ble Allahabad High Court in Istekar Vs State of U.P and Another dated 19.07.2021 for the proposition that Section 233(3) of Cr.P.C., deals with calling of the witness by



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defence and does not deal with recalling of the prosecution witness.

Section 233(3) of Cr.P.C reads as follows:

If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice".

The reading of this section makes it clear that, when entering upon the defence, if the accused puts in any written statement, the Judge shall file it with the record. If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

5. In the factual background of the case, where petitioner filed petition



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under Section 311 of Cr.P.C in Crl.M.P.No.206 of 2019 and that was dismissed on 22.11.2019 on merits, subsequent petition filed under Section 311 of Cr.P.C came to be closed for the reason that, NBW is pending against the petitioner, this Court is of the considered view that filing the petition under Section 233 (3) of Cr.P.C., for the purpose of cross-examination cannot be entertained and it was rightly dismissed by the learned Judge.

6. In this view of the matter, this Court finds no merits in this petition. Accordingly, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petition is closed.

20.03.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
Sma

To

1. Inspector of Police,
Vellore North L & O Police Station,
Vellore District.
2. The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN,J.



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