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Crl.O.P.No.5061 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5061 of 2023

1.Murukesh
2.Pachamma

... Petitioners

Vs.

The State represented by
The Inspector of Police,
Kelamangalam Police Station,
Krishnagiri District.
(Crime No.220 of 2016)

... Respondent

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the dismissal order passed in Crl.M.P No. 407 of 2022 dated 10.01.2023 on the file of the Additional Session Judge Hosur.

For Petitioner : Mr.V.Sakkarapani

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



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ORDER

This Criminal Original Petition has been filed to set aside the dismissal order passed in Crl.M.P No. 407 of 2022 dated 10.01.2023 on the file of the Additional Session Judge Hosur.

2. Learned counsel for the petitioners submitted that, petitioners filed petition to recall PW1 to PW14 for the purpose of cross examination. Without considering the petitioners' submissions and fact that, if cross examination is not permitted, petitioners would be prejudiced, learned Additional Sessions Judge, Hosur dismissed the petition. Challenging the said dismissal order, this petition is filed.

3. In response, learned Government Advocate (Criminal side) submitted that, PW1 to PW14 were examined over a period of two years. Certain accused, who had not cross examined PW1 to PW14, had filed petition to recall and the same was allowed and these witnesses were recalled for cross examination. Petitioners had not chosen to cross examine either when these witnesses were



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examined in chief or when they were recalled for cross examination. Learned Judge finding that, repeated recalling of witnesses would amount to harassment, dismissed the petition.

4. Considered the submissions and perused the records.

5. This Court, on going through the records and submissions of the learned counsel for the parties, finds that PW1 and PW2 were examined in chief on 07.12.2021 and PW1's further chief examination was completed on 05.07.2022. PW3 and PW4 were examined on 05.07.2022 and PW5 to PW8 were examined on 08.08.2022. PW1 to PW8 were recalled for cross examination and cross examined on 23.08.2022 and 03.09.2022. PW9 and PW10 were examined on 17.10.2022 and cross examined. PW11 to PW14 were examined on 07.11.2022 and cross examined. Therefore, the learned Additional Sessions Judge, Hosur finding that, recalling of witnesses again and again amounts to harassment and leads to retraction of oral statements of the witnesses, dismissed the petition.



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6. The reasons stated by the learned Judge for dismissing the petition is that, petitioners' had not cross examined PW1 to PW14, when they were recalled and cross examined by certain accused. The petitioners have not chosen to avail the opportunity of cross examination, either at the time of chief examination of these witnesses or when they were recalled for cross examination. There is no doubt that, repeated summoning of witnesses for the purpose of cross examination amounts to harassment of these witnesses and in a way it amounts to persecution. There is also a possibility of witnesses giving different version due to lapse of time or confusion in the minds of the witnesses due to repeated examination. It is also observed in the Order of the learned Judge that, PW1 to PW14 had been adequately cross examined. Therefore, this Court finds no reason to interfere with the Order of the learned Additional Sessions Judge, Hosur in Cr.M.P.No.407 of 2022 and the same is confirmed. Accordingly, this Criminal Original Petition is dismissed.

03.03.2023

Internet : Yes / No

Index : Yes / No

Speaking/Non speaking order
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- To
1. The Additional Session Judge,
Hosur.
 2. The Inspector of Police,
Kelamangalam Police Station,
Krishnagiri District.
 3. The Public Prosecutor,
Madras High Court.



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G.CHANDRASEKHARAN,J.

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