



WEB COPY



Crl.O.P.No.5338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

CrI.O.P.No.5338 of 2023
and CrI.M.P.Nos.3353 & 3354 of 2023

N.E.Amanullah

... Petitioner

Vs.

1.State Represented by
Inspector of Police (L & O)
B – 1, North Beach Police Station,
Chennai – 600 001.

2.A.S.Amanulla Khan

3.Mohamed Rukurudhin

4.S.Osaratha Ameen

5.S.Madhana Musayar

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C. praying to withdraw the case in S.C.No.329 of 2019 from the file of the learned XIX Additional Sessions Judge at Chennai, transfer it to any other competent criminal court in nearer district.

For Petitioner : Mr.E.V.Chandru
for M/s.S.H.Syed Anwar



Crl.O.P.No.5338 of 2023

For Respondent : Mr.S.Santhosh (For R1)
Government Advocate (Crl. Side)

WEB COPY

ORDER

This Criminal Original Petition has been filed to withdraw the case in S.C.No.329 of 2019 from the file of the learned XIX Additional Sessions Judge at Chennai, transfer it to any other competent criminal court in nearer district.

2.The learned counsel for the petitioner submitted that out of sixteen witnesses cited in the witness list in S.C.No.329 of 2019, P.W.1 was examined on 07.12.2022. On that date petitioner filed petition under Section 231 (2) Cr.P.C. for deferring cross-examination of P.W.1 and that petition was not received. Then, P.W.2 to P.W.4 were examined in chief. Since, P.W.1 was not cross-examined, P.W.2 to P.W.4 were also not cross-examined by the accused. Petitioner filed petition under Section 311 Cr.P.C. for recall of P.W.1 to P.W.4 and that petition was returned by the learned XIX learned Sessions Judge, Chennai, stating that signature of the counsel is not found in the petition and no reason stated why P.W.1 to P.W.4 were not cross-examined on the date of recording the chief examination. Apprehending that petitioner may not get free and fair trial, this petition is filed for transfer.



Crl.O.P.No.5338 of 2023

WEB COPY

3.The learned Government Advocate (Criminal side) submitted that the reasons submitted by the learned counsel for the petitioner are not sufficient to order transfer of the case in S.C.No.329 of 2019.

4.Considered the rival submissions and perused the records.

5.Hon'ble Supreme Court and this Court time and again had repeatedly held that the Chief examination and cross-examination should be done on the same date. It is claimed by the learned counsel for the petitioner that petition filed under Section 231 (2) Cr.P.C. for deferring the cross-examination of P.W.1 was not received by the trial Court. It appears that no further action was taken against the refusal to receive the petition filed under Section 231 (2) Cr.P.C. Other reason stated in the petition is that since P.W.1 was not cross-examined, P.W.2 to P.W.4 were also not cross-examined, as they were similarly placed. This is certainly not correct, proper and valid reason for not cross-examining P.W.1 to P.W.4. The learned XIX Additional Sessions Judge at Chennai, has made only a return as mentioned above. Without complying the return, it appears that this transfer petition is filed. That cannot be



Crl.O.P.No.5338 of 2023

permitted. Petitioner is directed to comply the return made by the learned XIX Additional Sessions Judge at Chennai, and on compliance of the return, the learned XIX Additional Sessions Judge at Chennai, is directed to dispose the 311 Cr.P.C petition and the case in S.C.No.329 of 2019 on merits and in accordance with law.

6.In this view of the matter, this Court is of the view that there is no case made out for transfer of S.C.No.329 of 2019 from the file of the learned XIX Additional Sessions Judge, Chennai, to any other Court.

7.With the above direction and observation, this Criminal Original Petition is disposed. Consequently, connected miscellaneous petitions are closed.

08.03.2023

Internet: Yes
Index: Yes/No
ep



WEB COPY



Crl.O.P.No.5338 of 2023

To:

1. Inspector of Police (L & O)
B – 1, North Beach Police Station,
Chennai – 600 001.
2. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.5338 of 2023

G.CHANDRASEKHARAN, J.
ep

Crl.O.P.No.5338 of 2023
and Crl.M.P.Nos.3353 & 3354 of 2023



WEB COPY



Crl.O.P.No.5338 of 2023

08.03.2023