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Crl.O.P.No.6285 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.6285 of 2023
and Crl.M.P.No.3959 of 2023

1.Savariammal

2.K.Paul Santhosh

...Petitioners

Vs

State Rep by
The Deputy Superintendent of Police,
Economic Offence Wing-Hqrs
Chennai – 600 083.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in the above case and set aside the order dated 09.02.2023 passed by the Learned Chief Metropolitan Magistrate at Egmore in Crl.MP.No.1223/2023 in CC.No.8770/2004 on his file pending before the CMM Court at Egmore.

For Petitioners : Mr.S.Samuel Raja Pandian

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



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ORDER

This Criminal Original Petition has been filed to call for the records in the above case and set aside the order dated 09.02.2023 passed by the Learned Chief Metropolitan Magistrate at Egmore in Crl.MP.No.1223/2023 in CC.No.8770/2004 on his file pending before the CMM Court at Egmore.

2.The learned counsel for the petitioners submitted that petitioners filed petition under Section 311 Cr.P.C. in Crl.M.P.No.1223 of 2023 for recalling P.W.1 to P.W.20 for the purpose of cross examination. However, the learned Metropolitan Magistrate, Egmore, dismissed the petition without considering the genuineness of the petitioner's claim. He further submitted that if the petitioners are not permitted to cross-examine the witnesses, they would be seriously prejudiced.

3.In response the learned Government Advocate (Criminal side) submitted that the prosecution had closed the prosecution evidence with the examination of P.W.1 to P.W.20. These witnesses were examined from 2012 to 2022. If the witnesses are permitted to be cross-examined at this point of time, it would defeat the object of criminal trial.



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4.Considered the rival submissions and perused the records.

5.It is seen from the counter filed by the respondent that witnesses P.W.1 to P.W.20 had been examined on the following dates:-

P.W.1-05.09.2012, P.W.2-30.10.2012, P.W.3-23.09.2012,

P.W.4-23.09.2013, P.W.5-06.01.2014, P.W.6-06.01.2014

P.W.7-06.01.2014, P.W.8-06.02.2014, P.W.9-06.02.2014,

P.W.10-06.02.2014, P.W.11-22.05.2019, P.W.12-09.10.2019

P.W.13-07.11.2019, P.W.14-07.11.2019, P.W.15-03.12.2019,

P.W.16-03.12.2019, P.W.17-03.12.2019, P.W.18-07.07.2022

P.W.19-04.08.2022 and P.W.20-16.12.2022.

6.The learned Metropolitan Magistrate, Egmore, stated that the witnesses namely P.W.1 to P.W.10 had been examined between 05.09.2012 to 06.02.2014 and P.W.11 to P.W.17 had been examined in 2019 and P.W.18 and P.W.20 had been examined in 2022. The accused had not taken any steps for cross-examining these witnesses. No valid reason had been given in the petition for recalling these witnesses. The reasons stated in the petition that witnesses could not be cross examined for the reason that they had been



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examined on different dates, cannot be accepted. Cross-examination was closed for the reason that the learned counsel appearing for the accused reiterated that accused have no cross-examination of these witnesses. It is further stated that recording of evidence was over, accused were questioned under Section 311 Cr.P.C. and therefore filing of recalling petition at this belated point of time is not correct. This Court on going through the petition filed to recall of these witnesses found that only reason stated for not cross-examining these witnesses are that i) due to unavoidable circumstance and that ii) witnesses were examined on various dates with huge interval, the witnesses could not be cross-examined.

7. Cross-examination of a witness in a criminal trial is absolutely necessary to find out the truth. With a view to give an opportunity to the petitioner, this Court allows this petition by setting aside the order dated 09.02.2023 passed by the Learned Chief Metropolitan Magistrate at Egmore in Crl.MP.No.1223 of 2023 in CC.No.8770 of 2004, in so far as the dismissal of recall of P.W.1 to P.W.20 and allows the petition to recall P.W.1 to P.W.20 subject to the following conditions:-

i) petitioners must pay costs of Rs.10,000/- each to P.W.1 to P.W.20



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through Court and,

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ii)cross-examination of P.W.1 to P.W.20 should be completed on the same date, when they appear before the trial Court for cross-examination.

8.With the above direction and observation, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

20.03.2023

Internet:Yes
Index:Yes/No
ep

To:

The Deputy Superintendent of Police,
Economic Offence Wing-Hqrs
Chennai – 600 083.



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G.CHANDRASEKHARAN, J.
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