



CrI.O.P.No.8047 of 2023
and
CrI.M.P.No.5106 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 19.04.2023	Orders pronounced on .04.2023
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.8047 of 2023
and
CrI.M.P.No.5106 of 2023

Mr.Rajesh Das, I.P.S.

... Petitioner

Vs.

State, rep. by
Superintendent of Police-II
Crime Branch CID
Pantheon Road
Egmore
Chennai-600008.

... Respondent

This Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the impugned order dated 23.03.2023 passed by the learned Chief Judicial Magistrate, Villupuram in CrI.M.P.No.1961 of 2023 in C.C. No.231 of 2021 and consequently, direct to allow the petition to recall the witnesses PW-9 Mr.Vithun Kumar (LW-10) and PW-62 Mr.Sundarrajan (LW-111), filed by the petitioner under section 311 of



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Cr.P.C. in C.C. No.231 of 2021 on the file of the learned Chief Judicial Magistrate, Villupuram.

For Petitioner : Mr.Abdul Saleem
Senior Counsel
for
M/s.M.Vijayamehanath

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (CrI. Side)

ORDER

This petition is filed for setting aside the impugned order dated 23.03.2023 passed by the learned Chief Judicial Magistrate, Villupuram in CrI.M.P.No.1961 of 2023 in C.C.No.231 of 2021 and consequently, directing to allow the petition to recall the witnesses PW-9 Mr.Vithun Kumar (LW-10) and PW-62 Mr.Sundarrajan (LW-111).

2. Learned counsel for petitioner submitted that the petition was filed under Section 311 Cr.P.C. in CrI.M.P.No.1961 of 2023 for recalling PW.9 and PW.62. The reason for filing this petition is that



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some records in relation to these witnesses could not be verified when they were examined in chief. Unless these witnesses are permitted to be cross examined by petitioner, petitioner would be seriously prejudiced. However, learned Chief Judicial Magistrate dismissed the petition, requiring filing of this petition.

3. In response, learned Government Advocate (Criminal Side) opposes this petition on the ground that PW.9 was already cross examined. Petitioner is dragging the case by filing petitions for recalling the witnesses one after other in piece meal and this petition is filed after a lapse of nine months.

4. Considered the rival submissions and perused the records.

5. The evidence of PW.9 and PW.62 is produced for the perusal of this Court. It is seen from their evidence that PW.9 was examined in chief on 17.06.2022 and was not cross examined by the accused on that



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day. Subsequently, PW.9 was cross examined on 21.06.2022 by petitioner. The settled proposition of law is that chief examination and cross examination should be completed on the same day. It appears that PW.62 is not cross examined in this case so far. This Court is of the view that cross examination of witness is absolutely necessary in a criminal case for taking a right decision. In this view of the matter, this Court sets aside the order dated 23.03.2023 passed by learned Chief Judicial Magistrate, Villupuram in Crl.M.P.No.1961 of 2023 in C.C.No.231 of 2021 and modifies to the effect that the prayer in respect of recall of PW.62 is allowed. At the same time, since PW.9 was already cross examined by petitioner, this Court is not inclined to permit PW.9 to be again recalled for the purpose of further cross examination. The dismissal of recalling PW.9 is confirmed.

6. In the result, this Criminal Original Petition is allowed in part insofar as recalling of PW.62 is concerned and dismissed insofar as recalling of PW.9 is concerned. Learned Chief Judicial Magistrate is



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directed to summon PW.62, on payment of costs of Rs.1,000/- to the witness, through the Court. PW.62 should be cross examined on the same day when he appears before the Court for giving evidence. Consequently, connected Miscellaneous Petition is closed.

.04.2023

mra

(2/2)

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Chief Judicial Magistrate
Villupuram.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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Pre-delivery order in
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.04.2023