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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16189 of 2023
and Crl.M.P.No.10205 of 2023

R.Murugesan

...Petitioner

Vs

1.The Subordinate Judge,
Namakkal.

2.Paavai

3.Kavitha

4.V.K.Hiriharan

5.Senthilkumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 10.03.2023 made in Crl.M.P.No.611 of 2023 in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate, Paramathy.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor for R1



ORDER

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This criminal original petition has been filed challenging the order passed by the Court below in CrI.M.P.No.611 of 2023 dated 10.03.2023, wherein, the Court below has held that the concerned Judicial Officer need not be examined as a witness in the case. The Court below in order to come to such a conclusion has relied upon Section 121 of the Evidence Act, 1872. Aggrieved by the same, the complainant has approached this Court.

2.This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

3.The learned Sub Judge, Namakkal has filed a complaint on 04.01.2018 before the learned Judicial Magistrate, Paramathy and it was taken on file in C.C.No.21 of 2018. The accused persons were questioned on 12.07.2018 and they denied the charges. The concerned court took cognizance of the complaint and the petitioner who is the defacto complainant was examined. That apart, one Karthikeyan was also examined as PW2. The Sheristadar of the Sub Court, Namakkal was examined as PW3.



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4.The petitioner contends that the Sub Judge, Namakkal, must also be examined as one of the witness in this case, since the offence was committed during the pendency of the proceedings before the concerned Judge. This contention was dealt with by the Court below and the Court below on considering Section 121 of the Evidence Act, held that the Judicial Officer cannot be called as a witness in the case.

5.It is brought to the notice of this Court that the proceedings has now crossed the stage of Section 244 of Cr.P.C., and charges have been framed. Insofar as the procedure to be adopted in this case, it will fall under the B category under Chapter XIX. Now that the charges have been framed, the Court below has to start the procedure from Section 246 of Cr.P.C. At this stage, the witnesses will be examined and they will also be cross-examined and the Court will thereafter proceed further to put questions to the accused person under Section 313 of Cr.P.C and ultimately, the final order will be passed. In view of the same, the non-examination of the concerned Judge at the pre-charge stage need not be gone into in this petition. This question can be left open and the concerned Judge who is proceeding further with the trial from the stage of Section 246 of Cr.P.C., can take a decision at the appropriate time regarding the examination of the Judicial Officer as a witness.



N.ANAND VENKATESH, J

ssr

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6.This Criminal Original Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

20.07.2023

Index : Yes/No

Speaking order:Yes/No

Neutral citation:Yes/No

ssr

To

1.The Subordinate Judge,
Namakkal.

2.The Judicial Magistrate, Paramathy.

3.The Public Prosecutor,
High Court, Madras.

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