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Criminal Original Petition Nos.13046 & 15398 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition Nos.13046 & 15398 of 2023

and

Crl.M.P.Nos.9602, 9603 & 7918 of 2023

1. Ushman Basha
S/o.Mahaboob Basha
2. Mahaboob Basha
S/o.Abdul
3. Hasina Begum
W/o.Mahaboob Basha

...Petitioners
in both Crl.OPs

Vs

State Rep. by
Inspector of Police
W30, All Women Police Station
Poonamallee.

... Respondent
in Crl.O.P.No.13046 of 2023

1. State Rep. by
Inspector of Police
W30, All Women Police Station
Poonamallee.
2. B.Durdana Fathimal
W/o.Usman Basha

... Respondents
in Crl.O.P.No.15398 of 2023



Criminal Original Petition Nos.13046 & 15398 of 2023

PRAYER :

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Criminal Original Petition No.13046 of 2023 filed under Section 482 of the Code of Criminal Procedure, 1973, praying to set aside the order in Crl.M.P.No.1212 of 2023 in C.C.No.237 of 2017 dated 20.03.2023 on the file of the Judicial Magistrate No.1, Poonamallee.

Criminal Original Petition No.15398 of 2023 filed under Section 482 of the Code of Criminal Procedure, 1973, praying to withdraw and transfer C.C.No.237 of 2017 pending on the file of the Judicial Magistrate No.1, Poonamallee, Tiruvallur to any other competent Court in Chennai District.

For Petitioners [both Crl.OPs] : Mr.R.Anburaj

For Respondents [Respondent in Crl.O.P.No.13046 of 2023 & R1 in Crl.O.P.No.15398 of 2023] : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

Since the issue involved in both these Criminal Original Petitions are common they are taken up together, heard and disposed of through this common order.



2. Crl.O.P.No.15398 of 2023 has been filed seeking for transfer of proceedings pending in C.C.No.237 of 2017 on the file of Judicial Magistrate I, Poonamallee, Tiruvallur, to any other Court.

3. Crl.O.P.No.13046 of 2023 has been filed challenging the order passed by the Court below dismissing the application filed u/s.311 Cr.P.C. to recall PW-1 for further cross-examination.

4. Heard learned counsel for petitioners and learned Additional Public Prosecutor appearing on behalf of official respondent.

5. The petitioners are facing trial before the Court below for offences u/s.498-A, 406 and 506(ii) IPC and Section 4 of the Dowry Prohibition Act. The witnesses on the side of the prosecution were examined and they were also cross-examined and questioning u/s.313 Cr.P.C. was also completed. The evidence on the side of the defence was also over and the case was at the stage of final arguments. At this stage, the petitioner found that there was some mistake while recording the deposition of PW-1 and hence, filed Crl.M.P.No.1212 of 2023 to recall PW-1 for further cross-examination and



to set right the mistake that had crept in the deposition of PW-1. This application was dismissed by an order dated 20.03.2023 and aggrieved by the same, CrI.O.P.No.13046 of 2023 has been filed. The petitioners were not satisfied in the manner in which the proceedings were conducted by the Court below and according to the petitioners, the Court below was insisting for arguing the case finally even without considering the application filed for recalling PW-1 for cross-examination. In view of the same, the petitioners have filed a transfer petition in CrI.O.P.No.15398 of 2023.

6. In the considered view of this Court, the application filed by the petitioners at the fag end of the proceedings when the case was at the stage of final arguments was rightly rejected by the Court below and this Court does not find any illegality or infirmity in the order.

7. Learned counsel for petitioners pointed out a particular portion in the cross-examination and submitted that it was wrongly recorded. The deposition was recorded in the year 2018 whereas the petitioners wanted corrections to be made in the deposition in the year 2022. If there was really a correction, it has to be done then and there and there is no provision in the



Code of Criminal Procedure, 1973, to correct the deposition after a considerable period of time. In any case, the deposition has to be read as a whole and it cannot be understood by just reading one or two words or a sentence.

8. In view of the above, it is always left open to the petitioners to make their submissions on the merits of the case and also point out the portion in the deposition, which according to them was wrongly recorded and explain the Court as to why it will not come within the context if the over all deposition of PW-1 is taken into consideration. Except giving this clarity, this Court is not inclined to grant any of the reliefs sought for by the petitioners.

9. In view of the above, these Criminal Original Petitions are dismissed. There shall be a direction to the Court below to dispose of C.C.No.237 of 2017 within a period of two (2) months from the date of receipt of a copy of this order.



Criminal Original Petition Nos.13046 & 15398 of 2023

N.ANAND VENKATESH, J

gm

Learned Additional Public Prosecutor brought to the notice of this Court that non-bailable warrant was issued by the Court below during the previous hearing on 11.07.2023. It is left open to the petitioners to file an application for recalling the non-bailable warrant and orders shall be passed on the same day and the Court below shall proceed further to hear the final arguments in the case. Connected miscellaneous petitions are closed.

21.07.2023

Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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To

1. The Judicial Magistrate I,
Poonamallee.
2. The Inspector of Police
W30, All Women Police Station
Poonamallee.
3. The Public Prosecutor,
High Court, Madras.

Criminal Original Petition Nos.13046 & 15398 of 2023