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Crl.O.P.No.14305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.14305 of 2023

Vijay

.. Petitioner

vs

The State Rep. By
The Inspector of Police
Kaveripattinam Police Station,
Krishnagiri District.

.. Respondent

Petition filed under Section 482 of CrPC to call for the records relating to the order of dismissal made in Crl.M.P.No.5194 of 2023 in C.C.150 of 2018 dated 03.05.2023 by learned Judicial Magistrate No1, Krishnagiri, dismissing the petition for re-call the witnesses PW6 to PW9 for cross examination and set aside the same by allowing the above criminal original petition.

For Petitioner : Mr.D.Arun

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

1. This petition has been filed challenging the order passed by the learned Judicial Magistrate I, Krishnagiri, dismissing the petition filed under Section 311 of CrPC to re-call P.W.6 – P.W.9 and to cross-examine.



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2. Heard Mr.D.Arun, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondent.

3. The petitioner is facing trial for the charges under Sections 294 (b), 324 and 506(ii) IPC. The prosecution examined nine witnesses and none of these witnesses were cross examined by the petitioner. Initially, the petitioner filed a petition under Section 311 of CrPC in Crl.M.P.No.5218 of 2022 for recalling and cross examining P.W.1 to P.W.5. This petition came to be dismissed by the Court below by an order dated 27.07.2022.

4. Aggrieved by the above order, the petitioner filed Crl.O.P No. 27109 of 2022 before this Court and this Court by order dated 08.11.2022 allowed the petition and permitted to re-call of P.W.1 to P.W.5 for cross examination subject to certain conditions. It is brought to the notice of this Court that all the five witnesses were re-called and cross examined.

5. The petitioner filed yet another petition in Crl.M.P.No.5194 of 2023 for recalling P.W.6 to P.W.9 for cross-examination. This petition was dismissed by the Court below



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by an order dated 03.05.2023. Aggrieved over the same, the present petition has been filed.

6. In the considered view of this Court, the petitioner did not cross-examine any of the witnesses, who were examined on the side of the prosecution. Even when the earlier petition was filed in Crl.M.P.No.5218 of 2022 for recalling the witnesses for cross examination, for reasons best known to the petitioner, it was confined only to P.W.1 to P.W.5. Even at that point of time, the petitioner could have re-called and cross examined P.W.6 to P.W.9. The petitioner did not choose to re-call these witnesses. After this Court had allowed the earlier petition and given an opportunity to re-call and cross examine P.W.1 to P.W.5, the petitioner leisurely filed yet another petition in Crl.M.P.No.5194 of 2023 to re-call and cross-examine PW.6 to P.W.9.

7. The Court below while dealing with this petition has found that P.W.6 was examined in chief on 24.07.2019, P.W.7 and P.W.8 were examined in chief on 26.08.2019 and P.W.9 was examined in chief on 19.01.2019. P.W.10 was also examined in chief on 13.07.2022. None of these witnesses were cross examined by the petitioner. The petitioner has filed a petition to re-call P.W.6



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to P.W.9 during the year 2023. The Court below, has rightly come to the conclusion that there are absolutely no reasons for the petitioner to have waited for such a long time to re-call these witnesses for cross-examination. Re-calling a witness cannot be done at the whims and fancies of the accused person. The law mandates that the witnesses will have to be cross-examined on the same day they are examined in chief. If that is not possible, a petition must be filed within a reasonable time to re-call the witnesses to cross examine. If the accused person does not choose to file such a petition within reasonable time, and like in the present case, the accused had waited for nearly four years, such a petition lacks merits and it has been dismissed by the Court below.

8. This court does not find any ground to interfere with the order passed by the Court below and accordingly this criminal original petition stands dismissed. There shall be a direction to the Court below to complete the proceedings in C.C.No.150 of 2018 within a period of two months from the date of receipt of a copy of this order and a report shall be filed to this Court.

03.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm



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To:

- 1.The Inspector of Police
Kaveripattinam Police Station,
Krishnagiri District.
- 2.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH,J.

ssm

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