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Crl.O.P.No.5019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5019 of 2023

Chandrasekar

... Petitioner

Vs.

The Inspector of Police,
CCB Police Station,
Tiruppur.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order dated 22.08.2022 made in Cr.M.P.No.2402 of 2022 in C.C.No.309 of 2012 on the file of the Judicial Magistrate No.I, Tiruppur.

For Petitioner : M/s.Balaji Thirumoorthy
For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 22.08.2022, passed in Cr.M.P.No.2402 of 2022 in C.C.No.309 of 2012, on the file of the Judicial Magistrate No.I, Tiruppur.



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2.The learned counsel for the petitioner submitted that petitioner filed Cr.M.P.No.2402 of 2022 for recall of PWs 1 to 10. These witnesses could not be cross examined for lack of certain materials. Unless these witnesses are permitted to cross examine, petitioner would be seriously prejudiced. Without considering this aspect, the learned Judicial Magistrate No.I, dismissed Cr.M.P.No.2402 of 2022. Therefore this petition.

3.The learned Government Advocate (Crl.Side) submitted that the accused had deliberately not cross examined the prosecution witnesses. Then, one after another they filed the recall petitions. Considering the nature and merits of the reasons given, some petitions were allowed and some petitions were dismissed. In this case, petitions were filed for recall of prosecution witnesses earlier and the petitions were dismissed. Suppressing the dismissal of the petitions filed for recall of witnesses, the present petition is filed.



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4.Considered the rival submissions and perused the records.

5.Reading of the order passed by the learned Judicial Magistrate No.I shows that petitioner had earlier filed a petition in C.M.P.No.1887 of 2021 for recall of PWs 1 to 12. That petition was dismissed on 10.11.2021. Again petitioner filed C.M.P.Nos.103/2022, 104/2022, 585/2022 & 586/2022 for recall of PWs 1 to 10. Those petitions were also dismissed. Without taking the dismissal order to the higher forum and suppressing the dismissal of those petitions, this petition is filed. Therefore, the learned Judicial Magistrate No.I, dismissed the petition for the aforesaid reasons and for the reason that repeated recall of witnesses would be an harassment and it is not a fair trial.

6.It is also seen from the order of the learned Judicial Magistrate No.I that despite PWs 1 to 12 had been examined over a period from 2016 to 2019, it appears that PWs 1 to 12 had not been cross examined by the petitioner. This Court also finds from the orders passed in Crl.O.P.Nos.27859 of 2022 & 26321 of 2022 that the accused had taken



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turns in filing petitions for recall of witnesses under Section 311 Cr.P.C. and brought the matter upto this Court. This Court finding that certain witnesses had not been cross examined, allowed the petitioner for recall of witnesses. However, petitioner had not examined even a single witness. Now, he has filed the petition for recall of PWs 1 to 12. This kind of conduct of criminal trial cannot be appreciated and it is not contemplated in the criminal procedure code. The Hon'ble Supreme Court and this Court had time and again reiterated that cross examination of the witnesses should be completed on the date when chief examination is completed. Therefore, this Court finds that there is no merit in the prayer for recall of PWs 1 to 10.

7.However, this Court directs the learned Judicial Magistrate No.I to permit the petitioner to cross examine the prosecution witnesses who are ordered to be recalled for the purpose of cross examination in Crl.O.P.Nos.27859 of 2022 & 26321 of 2022, if they appear before the Court for the purpose of cross examination by the other accused.



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8. Accordingly, this Criminal Original Petition is disposed of.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Judicial Magistrate No.I, Tiruppur.

2. The Inspector of Police,
CCB Police Station,
Tiruppur.



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G.CHANDRASEKHARAN, J.
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