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Crl.O.P.No.22346 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22346 of 2023

Chidambaram

... Petitioner

-VS-

The State Rep by
Inspector of Police,
Karamadai Police Station,
Coimbatore District,
Crime No.253 of 2014.

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to set aside the order made in C.M.P. No.1943 of 2023 dated 05.09.2023 on the file of the learned Judicial Magistrate Court, Mettupalayam.

For Petitioner : Mr.C.Ramkumar

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

ORDER



The petitioner herein facing trial for offence under Section 294(b), 354, 506 (2) of IPC r/w. 4 of TNPHW Act. The Calendar Case of the year 2014, has reached the stage of trial only on 09.05.2023 and the prosecution examined four witnesses and rest of the two witnesses were examined on 13.06.2023.

2. The petitioner who is the sole accused, has not cross-examined the prosecution witnesses PW.1 to PW.6. After chief examination of these witnesses, the matter was listed for examining the Investigation Officer. When the petition to recall P.W.1 to P.W.6 for cross examination was filed, the same was dismissed by the trial Court stating that petition to recall has been filed after lapse of three months without assigning any valid reason and in view of the observation made by the Hon'ble Supreme Court in the case of ***Vinodkumar Vs. State of Punjab*** reported in ***2015 SCC 3 page 220*** has held that the prayer for recalling witnesses is not sustainable.

3. The learned counsel appearing for the petitioner states that though the case is of the year 2014, the trial commenced only in the month of May 2023 and the recall petition filed after examination of six witnesses and before examination of the Investigation Officer. The petition to recall filed within three months and it is not after an inordinate delay as in the case of ***Vinodkumar***



cited by the trial Court. If the petition to recall these witnesses is not allowed, it will be prejudiced to the accused and will defeat the concept of fair trial.

4. Section 311 of Cr.P.C empowers the Court to summon witnesses under two circumstances. The first one is at any stage Court can summon person as witness and examine if the evidence appears to be essential to the just decision of the case and even without summon, the Court is empowered to examine the person present in the Court to arrive a just decision. The essence of this provision is to ensure the Court to arrive just decision of the case and for the said purpose, if it is essential to summon any witnesses or recall and re-examination of any person already examined, the Court is empowered to invoke Section 311 of Cr.P.C either on the request of the parties to proceed on its own.

5. In this case, this Court finds that the petitioner, who is the sole accused facing trial for grave offence of molesting the modesty of a women and criminal intimidation to the life of the victim. On the side of the prosecution, six witnesses so far been examined and the petitioner has not availed the right of cross examining these witnesses to discredit their reliability, though no reasons stated for recalling these witnesses, if this petition is not allowed it will highly prejudice the interest of the petitioner and Court may not be able to assess the



credibility of these six witnesses, who are not subjected to cross examination, to testify the veracity of the testimony.

6. However taking note of the fact that it is a very old case, the cross examination of these six witnesses should be completed within reasonable time. While allowing this petition direction has been given to the petitioner herein that on the appearance of six witnesses, he should cross examine them on the same day and for no reason, cross-examination of witnesses can be adjourned for future date. The witnesses to be recalled on application by the petitioner herein with necessary batta. Further the said exercise be completed within a period of 30 days from today.

7. With the above direction, this Criminal Original Petition is disposed of.

04.10.2023

Internet : Yes/No
Index : Yes/No
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To

1. The Judicial Magistrate, Mettupalayam.

2. The Inspector of Police,



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Karamadai Police Station,
Coimbatore District,

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3.The Public Prosecutor, Madras High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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