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Crl.O.P.No.25018 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25018 of 2023

Indrani

... Petitioner

Vs.

State rep.by,
Inspector of Police,
Mettupalayam Police Station,
Mettupalayam,
Coimbatore District.
Crime No.331 of 2015.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order made in Crl.M.P.No.1944 of 2023 dated 26.09.2023 on the file of the learned Judicial magistrate Court, Mettupalayam.

For Petitioner : Mr.C.Ram Kumar

For Respondent : Mr. S.Udaya Kumar

Government Advocate (Crl. Side)

ORDER

This petition is filed being aggrieved by the dismissal of the recall petition filed by the accused.



2. On perusing the records and the impugned order of the trial Court, this Court finds that, prosecution has examined PW6 and PW11. This is the second recall petition as far as these two witnesses are concerned. Infact, PW6 was examined in chief on 25.10.2017 and PW11 was examined in chief on 24.02.2021. On 21.04.2021, recall petition was filed in respect of PW5 to PW8 and PW11 and the same was allowed with conditions. Petitioner has examined other witnesses except PW11, though witness was present. Hence, recording non examination of PW11 inspite of presence of the witness on summons, the trial Court has closed the Cross Examination of PW11. Again, petitioner filed petition to recall PW6 and PW11 for Cross Examination on the ground that, learned counsel for the petitioner was not well on 04.07.2023 and it is necessary to recall it. The trial Court on referring the judgement of this Court rendered in **M.Vellaisamy Vs. The Inspector of Police** in **Crl.O.P.No.14671 of 2019** dated **12.06.2019**, replicating *“the practice of treating petitions filed under Section 311 of Cr.P.C., in a casual manner and calling witnesses to the Court for cross examination repeatedly should be stopped”* has dismissed the petition.



3. This Court on perusing the records find that, C.C.No. 378 of 2016 is pending on the file of the learned Judicial Magistrate, Mettupalayam for the past ten years. PW6 was examined in chief in the year 2017, earlier cross-examined and that witness is now again sought to be recalled. PW11, who has given his chief examination on 24.02.2021 was summoned again on the petition filed by the petitioner under Section 311 of Cr.P.C. In spite of his presence on 04.07.2023, petitioner has not availed the opportunity to cross-examine the witness. Further, as already pointed out, witnesses cannot be harassed by recalling repeatedly and if the accused in spite of affording the opportunity to cross-examine has failed to avail the opportunity and that cannot be taken as a matter of right to file petition under Section 311 of Cr.P.C., and harass the witnesses.

4. In view of the above findings, this Court finds no reason to entertain this petition. Accordingly, this Criminal Original Petition is dismissed.

01.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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Dr.G.JAYACHANDRAN,J.

Sma

To

1. Judicial Magistrate, Mettupalayam.
2. Inspector of Police,
Mettupalayam Police Station,
Mettupalayam,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court.

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