



Crl.O.P.No.25038 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.25038 of 2023

Deepakkumar

... Petitioner

Vs.

The State represented by
The Inspector of Police,
K-1, Sembium Police Station,
Sembium, Chennai.
(Crime No.669 of 2019)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 12.09.2023 passed in Crl.M.P.No.21074 of 2023 in S.C.No.390 of 2019 pending on the file of the XXI Additional City Civil Court, Allikulam, Chennai.

For Petitioner : Mr.S.Nagarajan

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

ORDER

The petitioner herein is the 4th accused in a case which was initially registered under Section 307 IPC and later altered as Section 302 IPC, since the



Crl.O.P.No.25038 of 2023

victim succumbed injury caused.

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2. After examination of PW.1, who is the defacto complainant and wife of the deceased, this petitioner has filed an application under Section 311 of Cr.P.C to recall PW.1 stating that some of the crucial question been omitted to put to the witness in the cross examination in the interest of justice and to find out the real fact. PW.1 has to be recalled under Section 311 Cr.P.C. However, the prosecution strongly opposed the application on the ground that PW.1, the defacto complainant has been extensively cross examined by the accused counsels. On behalf of the petitioner who is the 4th accused, his counsel separately cross examined the witness and therefore on a vague averment that certain questions were left out and the witnesses has to be recalled is only to harass the witness and try to won over her.

3. The trial Court has considered the submissions made by the learned counsel for the petitioner and the learned Public Prosecutor had dismissed the petition stating that Section 311 Cr.P.C., has to be exercised sparingly to advance the cause of justice and to arrive at just decision but not to fill up the lacuna. As



Crl.O.P.No.25038 of 2023

for as PW.1 in this case was examined on 19.01.2023 and cross examined in detail by all the accused and this petition is filed belatedly after most of the prosecution witnesses been examined. When there is apprehension of influencing the witnesses by other means to resile her to the earlier statement, it is not a fit case to exercise the power under Section 311 Cr.P.C.

4. This Court after considering the submissions and the averment found in the petition filed under Section 311 Cr.P.C., the testimony of PW.1 whom is now sought to be recalled finds that it is not a case where the Court to exercise the power under Section 311 Cr.P.C., to arrive at just decision, the trial Court has rightly dismissed the petition and assigned the reason. This Court upholds the decision of the trial Court and dismissed this Criminal Original Petition.

01.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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