



Crl.O.P.No.25661 of 2023
& Crl.M.P.No.17806 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.11.2023

Pronounced on: 16.11.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25661 of 2023
& Crl.M.P.No.17806 of 2023

Vel Durai

... Petitioner/Accused-1.

/versus/

1. The State Represented by,
The Inspector of Police,
Royapettah Police Station,
Chennai.

... Respondent/defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C.,
pleaded to set aside the order in Crl.M.P.No.25855 of 2023 in S.C.No.434 of
2007 dated 09.10.2023 passed by the I Additional Sessions Judge, City Civil
Court, Chennai.

For Petitioner : Mr.R.Sankarasubbu

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



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ORDER

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The petitioner herein is the first accused in S.C.No.434 of 2007 on the file of First Additional Sessions Judge, City Civil Court at Chennai. The charges against him are for offences under section 452, 395 and 397 of I.P.C. After completion of examination of prosecution side witnesses and questioning under Section 313 of Cr.P.C., a petition under Section 311 Cr.P.C to recall P.W.14 for cross examination filed by this petitioner. The Court below declined to entertain the petition for the reason that, a belated attempt is now made to win over P.W-14 by cross examining him after 4 years, which is not permissible as per the dictum laid down in Vinod Kumar -vs- State of Punjab. Also, the trial Court has observed that, the petition to recall witness in the printed form does not disclose reason to recall P.W-14 in a 19 year old case. Precisely, for not assigning valid reason to recall, the witness was examined 4 years ago, hence the trial Court has dismissed the petition.

2. The Learned Counsel for the petitioner submitted that the trial Court, after examination of Investigating Officer, summoned L.W.25 one Mr.Good Luck Rajendiran and examined him as P.W-16. While so, when the accused sought for recall of PW-14, it was declined to consider the prayer



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presuming that, it is an attempt by the accused to win over the witness. Thus, on assumption and presumption, the petition to recall was dismissed. The reason for recall if disclosed, the valuable right of the accused to cross will be lost.

3. The dairy order regarding adjudication of the trial Court and the petition for recall perused.

4. On 03/07/2019, when P.W-14 was present and examined, this petitioner (A-1) was not present. His petition filed under section 317 of Cr.P.C was allowed by the court. On that day, through PW-14, the prosecution has marked 9 material objects as M.O.4 to M.O.12. On the same day, on request by the prosecutor L.W-25 and L.W-26 evidences were dispensed, since their whereabouts was not known. Thereafter, the trial got adjourned to 17/07/2019. After completion of prosecution side evidence, on 05/07/2023, the accused were questioned under Section 313 Cr.P.C., about the incriminating material against them. On that day, the Learned Trial Judge had found that, one of the listed witness by name Mr.Goodluck Rajendiran (LW-25) is a material witness but the prosecution has given him up earlier since his whereabouts were not



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known. Invoking the powers under section 311 Cr.P.C, the trial Judge issued summons to Mr.Goodluck Rajendiran (L.W-25). Later, on receipt of the summon, he appeared and was examined on 08/08/2013 as P.W-16. This witness turned hostile. Thereafter, on 09/10/2023 the first accused/the petitioner herein had preferred application Crl.M.P.No.25855 of 2023 under Section 311 Cr.P.C., to recall PW-14. The said petition as observed by the trial Court it is in a printed form in which, the details of the parties filled up in the blanks. In paragraph (1), after the printed line, “The petitioner states that his counsel on record was unable to appear before this Hon’ble Court on 03.07.2019. The petitioner submits that the above said dated P.W.14 was examined and he was not cross examined by the accused counsel. Hence, pray for recall the PW-14 for cross examination.”

5. In the course of hearing this Criminal Original Petition, the Learned Counsel for the petitioner submitted that, the petitioner facing trial for house trespass, robbery and causing hurt. The identity of this petitioner not established by the prosecution through P.W-14, since the petitioner was not present in the Court when the deposition of P.W-14 was recorded. The witness has only mentioned the name of the petitioner. However, the trial Court is



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proceeding as if this witness has identified the petitioner. Therefore, it is necessary to recall this witness.

6. The reason said orally before the High Court are not found in the petition filed before the trial Court. Whatever observation made in the Miscellaneous Petition will no way going to influence the final decision of the Court, which will be based on the evidence available. While the petition for recall is filed without assigning reasons worth considering, the order of the Trial Court dismissing the recall petition cannot be termed as unjust or illegal as claimed by the petitioner. It is also noted that, on 03.07.2019, when P.W-14 examined, the petitioner was absent and he had been represented by his Counsel, who had filed petition under Section 317 Cr.P.C., and same been allowed. He had not sought for deferring the cross examination. Probably the need for recall of P.W.14 had arise, because the Court by exercising its power under Section 311 of Cr.P.C., had summoned L.W-25, who was given up by the prosecution earlier. Incidentally, the examination of P.W-14 and the date on which the prosecution has dispensed the examination of L.W-25 and L.W-26 are one the same day. L.W-25, who was examined as P.W-16 on the summon issued by the Court in exercise of power under Section 311 Cr.P.C., after



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completion of questioning under Section 313 of Cr.P.C., did not support the prosecution and treated as hostile witness. In his deposition P.W-16 had not said anything about P.W-14 or in the cross the prosecution has suggested to him anything about P.W -14. It is not a case where the accused had a right reserved under Section 231(2) of Cr.P.C to defer the cross examination of PW-14. Nor it is not the case of the petitioner that the examination of PW-16 pursuant to the summon issued by the Court in exercise of power under section 311 Cr.P.C., after questioning under Section 311 Cr.P.C., had caused him some prejudice which requires recall of P.W-14, which will be essential to arrive at a just decision of the case.

7. Section 311 of Cr.P.C does not gives any right to the accused to recall a witness already examined, without assigning valid reasons. While the Court is requested to exercise its power under Section 311 Cr.P.C., by either of the parties, they have to satisfy the Court that it is necessary to recall and re-examine a witness to arrive at just decision.



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8. Section 311 of Cr.P.C., consists of two parts. The first part gives pure discretionary authority to the criminal Court and enables it at any stage of inquiry, trial or other proceedings under the code to act in one of the three ways, namely i). summon any person as witness; or ii). to examine a person in attendance, though not summoned as a witness; or iii). to recall and re-examine any person already examined.

9. In the instant case, the trial Court had in exercise of its power under Section 311 of Cr.P.C (first part) has summoned L.W-25 and examined him as P.W-16, after questioning the accused under Section 313 of Cr.P.C., recording that, he (L.W.25) is a material witness. The same reasoning or parity cannot be drawn for recall of P.W-14 who was already examined 4 years ago. If we read the second part of Section 311 Cr.P.C., which is mandatory. It imposes an obligation on the Court, i). to summon and examine or ii). to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. (Ref: ***Swapan Kumar Chatterjee -vs- CBI*** reported in ***2019/INSC/11***)



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10. The Learned Counsel for the petitioner reading the impugned order of rejecting the recall petition submitted that the trial Judge has preconceived that, P.W-14 has specifically implicated the accused Vel Durai (petitioner herein), while the fact remains that, there was no such implication in the testimony of P.W-14. He also submitted that the trial Court had presumed that, the accused had won over the witness. This Court, though finds some force in the said submission, the observation of the trial Court is to be restricted with reference to the Miscellaneous Petition seeking recall of P.W-14.

11. This Court has no doubt in its mind that the trial Court while deciding the case will only go by the evidence on record and not the observations he made in the Miscellaneous Petition.

12. With the above observation, this ***Criminal Original Petition is dismissed.*** Consequently, connected Miscellaneous Petition is closed.

16.11.2023

Index :Yes.
Internet :Yes.
bsm



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Copy To:-

1. The I Additional Sessions Judge, City Civil Court, Chennai.
2. The Inspector of Police, Royapettah Police Station, Chennai.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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16.11.2023