



Crl.O.P.No.25820 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25820 of 2023

and

Crl.M.P.No.17910 of 2023

Balasubramania Adityan

... Petitioner

Vs.

Vasanthi Srinivasan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 05.10.2023 passed in Crl.M.P.No.10129 of 2023 in C.C.No.4975 of 2017 on the file of the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.R.Vinayaga Vishnu

ORDER

A private complaint filed for defamation is pending on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai since 2017.

2. After completion of examination of witnesses on the side of the complainant and questioning the accused under Section 313 Cr.P.C., the



case was posted for examination of defence side witness. The accused himself has mounted the witness box and initially filed proof affidavit in lieu of chief examination. However, when he mounted the witness box, he was not able to co-relate his testimony with the written proof affidavit. Hence the trial Court has asked the accused to depose his early oral deposition and same was recorded. Thereafter, he was also cross examined by the complainant. At this juncture, the petition under Section 311 Cr.P.C., filed to recall the complainant PW.1, that petition was dismissed by the trial Court. Being aggrieved, the present Criminal Original Petition is filed.

3. The finding of the trial Court and reasoning for the dismissal reads as below:-

“On perusal of the notes paper, it is found that the trial was completed and the accused was also explained of incriminating evidence against him under Section 313(1)(b) Cr.P.C., on 29.09.2022. At the request of the accused, the case was then posted for examination of defence side witness. On perusal of the case records at the representation of the parties, it is found that the accused already submitted his evidence in the



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form of Proof Affidavit in the year 2021 itself. Hence the case was posted for cross examination by the complainant. During the cross examination, the accused was found not aware of the statement in the proof affidavit and was not able to answer any question raised in respect of any of the portion of the proof affidavit. Since the proof affidavit cannot be received in criminal cases and the accused was also found not aware of any of the statement in the proof affidavit, the proof affidavit was struck down and the accused was directed to depose in the box. But the accused instead of entering the box filed the petition now to recall PW.1 for further cross examination. On perusal of the case records, it is found that PW.1 was cross examined on 06.12.2018. Then the case was adjourned for cross examination from 01.11.2021 to 29.11.2023 at the request of the defence counsel. When the case was posted for further cross examination on 29.11.2021 after recalling the witness, the defence counsel did not come forward to cross examine. But PW.1 was later again recalled and cross examined on 28.03.2022 by the accused. It was elaborate and complete. But the Petitioner has not stated



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anything about the cross examination by him on 28.03.2022 and is found to have suppressed the same before the Court. Changing the counsel is not a sufficient and valid reason to recall the witness. Hence it is herewith held that the petition is liable to dismiss.”

4. Though the learned counsel made all efforts to persuade the Court an opportunity to recall PW.1, from the records and findings of the trial Court, this Court finds that petition to recall PW.1 does not carry any merit. There is no specific reason stated in the affidavit to recall. The appearance of PW.1 again for re-examination is required and will be helpful for the just decision of the case just because certain question has not been put to the witness due to new counsel has taken charge of the case, Court cannot entertain the petition under Section 311 Cr.P.C., this Court finds no merit in this petition. Hence, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

10.11.2023

Neutral Citation : Yes/No
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1.The Sessions Judge, Fast Track Mahila Court, Thiruvapur.

2.The Inspector of Police,
All Women Police Station,
Thiruvapur District.

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



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Dr.G.JAYACHANDRAN, J.

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