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Crl.O.P.No.26564 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.26564 of 2023

1. Ezhaimuthu

2. Shanmugam

3. Gnanaprakasam

4. Prabhakaran

... Petitioners

Vs.

State Rep. By,
The Station House Officer,
Kadampuliyur Police Station.
Crime No.54 of 2016

...Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 05.08.2023 made in Crl.M.P.No.2054 of 2022 in C.C.No.123 of 2016 on the file of the learned Judicial Magistrate II, Panruti.

For Petitioner : Mr. D.Ashok Kumar

For Respondent : Mr. Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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ORDER

Petition is filed by the accused in C.C.No.123 of 2016 on the file of the learned Judicial Magistrate No.II, Panruti being aggrieved by the dismissal of the petition filed under Section 311 of Cr.P.C.

2. The case of the prosecution as against the petitioner for the offences under Sections 294(b), 323, 324 & 506(ii) of IPC. In the alleged occurrence, one M.Krishnamoorthy PW2 had sustained injuries and got treatment in the Panruti Government Hospital and transferred to JIPMER Hospital at Pondicherry and there he was admitted as inpatient from 02.03.2016 to 04.03.2016. After completion of examination of listed witnesses (PW1 to PW10), prosecution has taken out an application under Sections 91 and 311 of Cr.P.C to summon the Doctor, who has treated the injured. That petition was allowed and the Doctor at JIPMER was examined as PW11 and certain documents were marked through him. Thereafter, accused has taken out an application under Section 311 of Cr.P.C to recall PW1, PW3, PW4 and PW5. That application came to be dismissed by the trial Court on the ground that, there is no merits in the petition, warranting recall for further cross examination, since they were examined extensively by the defence Counsel



as early as 31.05.2017.

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3. The learned counsel for the petitioner submitted that, after allowing the application filed by the petitioner to summon the additional witness ie., the Doctor, who treated the injured , the same opportunity for the petitioner herein to recall PW1, PW3, PW4 and PW5 cannot be deprived.

4. Section 311 of Cr.P.C is for the Court to consider whether to summon the witness or recall the witness for arriving at just decision. After five years, petition is filed to recall the witnesses, who had already been examined both in Chief and Cross. There must be a valid and acceptable reasons to recall them. This Court could not find any valuable reason except the trial Court allowing similar application filed by the prosecution to summon the Doctor attached to JIPMER Hospital, who is not the listed witness. The said recall cannot be a ground for the accused to recall the witnesses, who had already been examined extensively five years ago.

5. The order of the trial Court allowing the application filed by the prosecution to summon the Doctor attached to JIPMER Hospital indicates



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that, the injured witness PW2 was treated by PW6/Doctor attached to Panruti Government Hospital and thereafter, the injured was referred to Pondicherry JIPMER Hospital. The opinion about the injury given by the PW6 as grievous injury. Therefore, to know about the treatment provided to the injured at JIPMER Hospital, the trial Court has allowed the application to summon the Doctor, who treated the injured at JIPMER Hospital and the relevant documents were called for under Section 91 of Cr.P.C. There is no similar reason or acceptable reason in the application filed by the accused to recall PW1, PW3, PW4 and PW5. Particularly, while, PW11 Doctor had spoken only about the treatment given to PW2 (injured Krishnamoorthy) and other witnesses whom the accused wanted to recall does not appears to be necessary for any purpose except to delay.

6. Accordingly, this Criminal Original Petition is dismissed.

07.12.2023

Index : Yes/No
Neutral Citation : Yes/No
Sma

Dr.G.JAYACHANDRAN,J.



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To:

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1. The Station House Officer,
Kadampuliyur Police Station.
Crime No.54 of 2016
2. The Public Prosecutor,
Madras High Court.

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