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CrI.O.P.No.225 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.225 of 2023

and

CrI.M.P.No.86 of 2023

1.Yazhal Industries (P) Ltd.,
No.165-B, Sai Building, Avinasi Main Road,
Chinnapalayam, Coimbatore District.

2.Arudha Milk International (P) Ltd.,
No.135/1A, Dhurugam Road,
Madur Village, Kallakurichi.

3.Sumathi.

4.Selvakumar

... Petitioner

Vs.

Ramesh

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order dated 07.12.2022 made in CrI.M.P.No.3407 of 2022 in S.T.C.No.24 of 2020 on the file of Judicial Magistrate at Kallakurichi whereby dismissed the petition of recall of PW1 for further cross examination filed under Section 311 of CrPC.



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For Petitioner : Ms.V.Kayalvizhi

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ORDER

This Criminal Original Petition has been filed to set aside the order dated 07.12.2022 made in CrI.M.P.No.3407 of 2022 in S.T.C.No.24 of 2020 on the file of Judicial Magistrate at Kallakurichi whereby the learned Magistrate dismissed the petition of recall of PW1 for further cross examination filed under Section 311 of CrPC.

2. The learned counsel for the petitioner submitted that the petitioner filed a petition under Section 311 of CrPC for recalling the PW1 for the purpose of further cross-examination to elicit some further information from PW1. However, the learned trial Judge had dismissed the petition. Therefore, this petition.

3. Heard the learned counsel for the petitioner.

4. On perusing the records produced in this case, especially the order of this Court in CrI.O.P.No.17221 of 2022, which had been filed for transferring S.T.C.No.24 of 2020 on the file of the learned Judicial Magistrate



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(FTC), Kallakurichi, it is made clear that while disposing the petition, this Court observed that PW1 and PW2 had not been cross-examined in spite of giving sufficient opportunities and therefore the evidence was closed and the matter was posted for arguments. At that stage, the transfer petition was filed. This Court in order to give a fair opportunity, held that one more opportunity should be given for the cross-examination of PW1 and PW2 on the date fixed by the trial Court. The direction was issued to the trial Court to summon PW1 and PW2 on a fixed date and there was also direction for completion of cross-examining PW1 and PW2 on the same day and atleast on the next working day. If cross examination is not done on these two days, the petitioner would loose the right of any further cross-examination. A further direction was issued to the trial Court to dispose the case within a period of two months.

5. The impugned order shows that after order of this Court in Crl.O.P.No.17221 of 2022, PW1 was cross-examined in lengthy manner on 22.11.2022 and PW2 was also cross-examined on 28.11.2022. Thereafter the petition in S.T.C.No.24 of 2020 was filed for the purpose of further cross-examination for the only reason that further information from the accused, which is relevant, has to be elicited. It is also observed that cross-examination



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of PW1 and PW2 was directed to be completed on a specific date. It is also directed to be dispose the case within two months from the date of receipt of copy of the order. Considering all these reasons, the learned trial Judge, finding that the petition for recalling PW1 for the purpose of further cross-examination was filed without any acceptable reasons and filed with malified intention to drag the proceedings, dismissed the petition. Challenging this order, this petition is filed.

6. The learned counsel for the petitioner submitted that only due to practical difficulties, the cross-examination of PW1 was not completed. Therefore, the petition filed for further cross-examination. This reason stated by the learned counsel for the petitioner cannot be accepted for the reason that case was pending in S.T.C.No.24 of 2020 from 2020 onwards. The order of the learned trial Judge shows that despite receiving the summons, the accused had failed to appear before the Court, which necessitated the issue ofailable warrant against A3 and A4. After COVID-19 pandemic period, PW1 was chief examined on 25.03.2022 and the case was adjourned for cross-examination of PW1 on 28.03.2022 and 06.04.2022. It was informed to the Court that CRP pending before this Court and therefore, the case is adjourned to 18.04.2022.



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On 18.04.2022, PW1 was not cross-examined and therefore, the evidence of PW1 was closed. Then, PW2 was examined and the case was posted for questioning under Section 313 CrPC. Thereafter, Crl.O.P.No.17221 of 2020 was filed. The sequence of events clearly shows that the petitioner had bent upon not cooperating with the early disposal of the case despite the direction of this Court for the disposal of the case, within a period of two months from the date of receipt of copy of the order in Crl.O.P.No.17221 of 2020.

7. This Court finds no reason to take a different view than the view taken by the learned trial Judge that the petition is filed with a malified intention to drag the proceedings. Therefore, this Criminal Original Petition is dismissed by directing the petitioner to deposit a sum of Rs.5,000/- (Rupees Five Thousand Only) to the Chief Justice relief fund. Consequently, the connected miscellaneous petition is closed.

06.01.2023

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To

The Judicial Magistrate,
Kallakurichi



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G.CHANDRASEKHARAN,J.

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