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Crl OP No.218 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.218 of 2024
and Crl MP No.160 of 2024

Kannan

Petitioner/Petitioner/Accused

Vs.

State Rep. by

The Inspector of Police,

Komangalam Police Station,

Coimbatore District.

...Respondent/Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to set-aside the order dated 09.10.2023 passed in Crl MP No.516 of 2023 in SC No.1 of 2017 on the file of the Subordinate Court at Pollachi, Coimbatore District.

For Petitioner

: Mr.C.D.Sugumar

For Respondent

: Mr.A.Damodaran

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below in CMP No.516 of 2023 in SC No.1 of 2017, partly allowing the application filed under Section 311 of Cr.PC to recall and for cross-examination of PW9 and dismissing the application insofar as PW1 and PW11 are concerned.



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2. Heard Mr.C.D.Sugumar, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for respondent.

3. The petitioner is facing trial before the Court below for offence under Section 394 r/w 397 of IPC. The prosecution examined PW1 on 08.10.2018 and he was also cross-examined on the side of the petitioner. PW9 was examined on 09.12.2019. But, however this witness was not cross-examined. PW9, is a Mahazar witness. PW11 was examined on 04.10.2021 and he was also cross-examined. According to the petitioner, certain vital questions were not put to PW1 and PW11 and therefore, the petitioner wanted to recall these two witnesses for further cross-examination. That apart, PW9 was not even cross-examined on the side of the petitioner and therefore, the petitioner wanted to recall this witness for cross examination.

4. The Court below was inclined to recall only PW9 for cross-



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examination on the ground that this witness was never cross-examined by the petitioner. Insofar as the other two witnesses are concerned, the Court below was not inclined to recall them and dismissed the application. Aggrieved by the same, the present Criminal Original petition has been filed before this Court.

5. In the considered view of this Court, this Court does not find any illegality in the order passed by the Court below insofar as dismissing the application to recall PW1. This witness was examined in the year 2018 and after a period of 6 years, the petitioner wants to recall this witness for cross examination. The ground raised by the petitioner to recall this witness is not sustainable and therefore, there is no question of recalling this witness at this length of time.

6. Insofar as PW11 is concerned, he is the Investigating officer. According to the petitioner, certain vital questions will have to be put to the Investigating officer with regard to vehicle involved in the offence, recovery of gold chain etc., Considering the seriousness of the charges framed against the petitioner, this Court is inclined to interfere with the



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order passed by the Court below insofar as dismissing the application to recall PW11. The Court below has already allowed the application to recall PW9 for cross examination.

7. In the light of the above discussion, the order passed by the Court below in CMP No.516 of 2023 dated 09.10.2023 is partly set-aside. The Court below shall recall both PW9 and PW11. These witnesses shall be cross examined on the same day of their appearance on the side of the petitioner. If for any reason, the petitioner does not cross examine these witnesses on the date of their appearance, the petitioner will lose his right to recall these witnesses in future.

8. In the result, this Criminal Original Petition is partly allowed. The Court below shall complete the proceedings in SC No.1 of 2017 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

10.01.2024

Index : Yes / No
Internet : Yes / No



Speaking Order : Yes/No
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Note : Issue on 18.01.2024

To

1. The Subordinate Court at Pollachi, Coimbatore District.

2.State Rep. by
The Inspector of Police,
Komangalam Police Station,
Coimbatore District.

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



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N.ANAND VENKATESH, J.,

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