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Crl.OP.No. 8036 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.8036 of 2024

and

Crl.MP.No.5849 of 2024

Kailash Jalinder Pakhare

... Petitioner

Vs.

The State Rep.by
The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai.
(Crime No.916/2020)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order made in Crl.MP.No.558 of 2024 in S.C.No.315 of 2021 by an order dated 15.03.2024 passed by the learned I Additional District and Sessions Judge, Chennai in so far as refusing to re call other witnesses.

For Petitioner : Mr.R.John Sathyan,
Senior Counsel for
Mr.G.Pugazhenthir

For Respondent : S.Udaya Kumar
Government Advocate (Crl.Side)



Crl.OP.No. 8036 of 2024

ORDER

The petitioner, who is the 1st accused in S.C.No.315 of 2021 is in prison. The examination of witnesses in this case is almost completed. At that stage, he has filed an application to re-call 16 witnesses, out of 59 witnesses examined by the prosecution.

2. The trial Court, after considering the objections and the prayer seeking to re-call of witnesses. Almost 1/3rd of the witnesses examined by the prosecution, has considered that it is suffice to re-call P.W.2, P.W.33, P.W.35, P.W.38 and P.W.39 in order to facilitate the fair and speedy trial. For the remaining witnesses, the request been declined. Being aggrieved, the present petition is filed to set aside disallowed of portion and to recall the other witnesses also.

3. The learned Senior Counsel appearing for the petitioner submitted that if not all the other remaining 11 witnesses, atleast, P.W.18, P.W.23 and P.W.24 be recalled and they are P.W.18, the daughter of the deceased, P.W.23 is an eye witness and P.W.24 is the custodian of electronic evidence has given certified under Section 65 B of Evidence Act.



Crl.OP.No. 8036 of 2024

4. The learned Government Advocate (Crl.Side) states that it is a case of triple murder and based on the direction of this High Court, time bound trial been conducted. Despite that after examination of prosecution witness and defence witness, the present application was filed to recall as many as 16 witnesses out of 59 witnesses. The trial court after considering the request passed an elaborate order, why only 6 witnesses to be recalled and for rest of the witnesses, there is no reason to allow the recall petition and if it is so allowed, it may lead to unnecessary further delay. The trial Court has also made an observation that except the witnesses mentioned the other witnesses cannot be recalled as they were either sufficiently cross examined or consciously left out without cross examining.

5. The learned Senior Counsel visualized that if these three witnesses at least to be recalled or else the petitioner will get prejudiced. From his submissions and the order passed by the Court below as well as the submissions made by the learned Government Advocate (Crl.Side), this Court finds that this petitioner is an Advocate by profession. He is the relative of the deceased. In a case of triple murder happened in the house during day light in a very thickly populated residential area,



Crl.OP.No. 8036 of 2024

P.W.18 whom the petitioner wants to recall is the daughter of victim. She had been examined on 12.04.2023 extensively. Similarly, P.W.23 is an eye witness examined on 22.05.2023 and cross examined along with P.W.24 on the same day. After that about 35 witnesses on the side of the prosecution were examined. Now, the matter is posted for questioning the accused persons under Section 313 of Cr.P.C. There are 9 accused in this case, out of which, one of the accused is absconding.

6. Though the present request of restricting the prayer to recall three witnesses apart from six witnesses who have already been permitted to be recalled and cross examined, the request cannot be acceded, since these witnesses who had been subjected to chief examination and cross examination, cannot be harassed again and again on the ground of giving fair opportunity to the accused persons who had already availed that opportunity and cross examined the witnesses.

7. The right to examine the witnesses is not a perpetual right and to be exercised at any time and more than once. Unless and until, there is sufficient and fair reason to grant leave to recall the witness who has already been examined, Court cannot on the guise of giving fair



Crl.OP.No. 8036 of 2024

opportunity, harass the witness who are many times, the victims of the crime.

8. In this case, this Court finds that the eye witness and the daughter of the deceased person had already been examined need not be recalled again to undergo the trauma. Hence, this Criminal Original Petition is dismissed.

Vv

03.04.2024

To

1. The I Additional District and Sessions Judge,
Chennai
2. The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

Vv

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