



CrI.O.P.No.14348 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.06.2024

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.14348 of 2024

and

CrI.M.P.No.8793 of 2024

1.Vilash Jalinder Pakray  
2.Jayamala

..Petitioners

/versus/

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

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records and set aside the order made in CrI.M.P.No.10227 of 2024 in S.C.No.315 of 2021 by an order dated 05.04.2024 passed by the learned I Additional District and Sessions Judge, Chennai.

|                 |                          |
|-----------------|--------------------------|
| For Petitioners | :Mr.G.Pugazhenth         |
| For Respondent  | :Mr.K.M.D.Muhilan        |
|                 | Govt.Advocate (CrI.Side) |

-----



Crl.O.P.No.14348 of 2024

WEB COPY

### ORDER

The petitioners herein are the 2<sup>nd</sup> and 4<sup>th</sup> accused in S.C.No.315 of 2021 on the file of the I Additional Sessions Judge, City Civil Court, Chennai. The case is related to triple murder held in a residential complex in the heart of the Chennai City. Out of 77 listed witnesses, the prosecution has already examined 59 witnesses and trial is at advance stage. At this juncture, the petitioners had taken out a petition to recall PW-46 and PW-49, who are the Inspectors of Police, were part of the investigation.

2. The reason to recall the witnesses is to put certain questions regarding confession and recovery, which were not put to the witnesses when they were present for the cross examination due to inadvertence. The said petition to recall these two witnesses were strongly opposed by the prosecution stating that these two witnesses were already cross examined by all the accused (totally 9 accused. Out of them, one accused absconding and case against him was spilt up). The cross



Crl.O.P.No.14348 of 2024

examination of these two witnesses were in depth and length. The reason that certain facts elucidated during the cross examination of PW-35, PW-38 and PW-39 need to be confronted with PW-46 and PW-49, is unsustainable.

3. The trial Court after considering the nature of the case and the reason stated to recall the witnesses, had dismissed the petition assigning the reasons and relying upon the judgment of the Hon'ble Supreme Court in *Swapan Kumar Chatterjee v. Central Bureau of Investigation reported in (2019 (14) SCC 328)* rendered in relation to the power of the Court under Section 311 of Cr.P.C. This Court had an opportunity to consider the order of the trial Court, which came to be challenged by the first accused and after perusing the records, this Court found that the intention of filing the petition to recall the witnesses, who had been examined at length, is only to protract the proceedings and not to the question, which has been omitted due to inadvertence. The accused, who faced the charge of grave offence has to be afforded adequate opportunity to defend himself and there cannot be any second



Crl.O.P.No.14348 of 2024

opinion at this proposition. However, if the accused intends to protract the proceedings misusing this proposition, the Court cannot be a mere spectator in a very sensitive and grave offence, that has been under trial for the past four years. Out of 77 listed witnesses, the prosecution has examined 59 witnesses and had closed their side evidence. The trial Court had formulated the questions under Section 3(1)(c) of Cr.P.C. regarding incrimination offence against the accused persons. When the stage is for marshalling the defence witness, the present petition is filed, stating some unconnected and unacceptable reasons. The trial Court had given an elaborate reason, why the petition under Section 311 of Cr.P.C., cannot be entertained. The reasons are inconsonance with the provisions of law and hence, no ground to interfere with the trial Court order. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

20.06.2024

Index:yes/no  
Speaking order/non speaking order  
Neutral citation:yes/no  
ari



CrI.O.P.No.14348 of 2024

WEB COPY

To:

- 1.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, Madras.



WEB COPY



Crl.O.P.No.14348 of 2024

DR.G.JAYACHANDRAN,J.

ari

Crl.O.P.No.14348 of 2024

and

Crl.M.P.No.8793 of 2024

20.06.2024