



CrI.O.P.No.14356 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.14356 of 2024

and

CrI.M.P.No.8797 of 2024

Mohamed Khalesha

.. Petitioner

/versus/

K.G.Balakrishnan

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to set aside the impugned order passed in CrI.M.P.No.28577 of 2024 in C.C.No.6066 of 2017, dated 30.05.2024 on the file of Fast Track Court II, Metropolitan Magistrate, Allikulam, Egmore.

For Petitioner

:Mr.M.Mohammed Hamza Ameer



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ORDER

Crl.M.P.No.28577 of 2024 is filed by the accused in C.C.No.6066 of 2017 to recall the complainant, who was cross examined extensively.

2. The reason stated to recall the witness that there are certain contradictions and embellishments in the deposition to that of the written complaint. After getting further instructions from the client for discharging the burden of proof, certain allegation has to be put to the complainant. Hence, he has to be recalled.

3. The said petition was opposed by the complainant on the ground that the reasons which are stated in the recall petition are not new facts, which was very much available for the counsel to put the appropriate questions to the witness. Having omitted to do so, now the recall petition is filed to protract the proceedings, which is already pending for several years. The trial Court on considering the reasons



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stated in the recall petition as well as in the counter, held that the petition to recall the witness cannot be entertained and it is not necessary for the Court to summon the witness again.

4. The learned counsel appearing for the petitioner submitted that the trial Court has found certain reasons, which are not even raised by the complainant in his counter, which indicates that the Judge pre-determined that he does not want to afford any opportunity to the petitioner.

5. This Court, in this case itself found that certain grounds are raised orally by the learned counsel for the petitioner, which does not form part of the petition to recall the witness or in this petition filed to set aside the order passed by the trial Court. Such oral arguments, which is not part of the record, may find place in the order to complete the reasoning for the decisions. That *per se* cannot be construed as pre-determination of the judicial mind.



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6. As far as this case is concerned, the grounds which are stated in the recall petition, does not appears to have been born out of the fact which were not within the knowledge of the petitioner, when the witness was summoned subject himself for cross examination. While so, the witness cannot be cross examined in a piece meal, more particularly, when the case is pending for about seven years for adjudication. Hence, this Criminal Original Petition is dismissed as devoid of merits. Consequently, connected Miscellaneous Petition is closed.

20.06.2024

Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To:

Fast Track Court II, Metropolitan Magistrate, Allikulam, Egmore.



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DR.G.JAYACHANDRAN,J.

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