



WEB COPY



CrI.O.P.No.18234 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.18234 of 2024

V.Kumarasamy

... Petitioner

Vs.

The State Rep.by
The Inspector of Police,
Sankari Police Station,
Salem District.
Crime No.436 of 2020

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the docket order of the cross examination dated 20.03.2024 in S.C.No.178 of 2022 pending on the file of the Assistant Sessions Judge of Sankari and permit the petitioner to confront the documents to the PW.1 in cross examination.

For Petitioner : Mr.B.Mohan

For Respondents : Mr.S.Udayakumar
Government Advocate (CrI.Side)

ORDER

The petitioner herein is the accused in S.C.No.178 of 2022 wherein, he is facing charge for offence under Sections 294 (b), 323, 342, 307 & 34 of IPC.



2. The substance of the charge is that with common intention,

the accused persons pursuant to previous enmity between the complainant's family regarding partition of the family property had trespassed into the land of the defacto complainant with intention to cause death. The defacto complainant had sustained multiple injury over his body and was taken to hospital, due to medical intervention he has survived. When the defacto complainant was in the witness box, the learned counsel for the petitioner had cross examined regarding the property dispute exchanged notice and power of attorney as well as alienation of property by A1 to third parties. After some time, the Court has intervened and questioned his counsel regarding the relevancy of these material fact in issue. Instead of explaining the relevancy, the counsel had retarded saying that he is not inclined to cross examine further and he will take steps to transfer the case to some other Court. The learned Judge recording the conduct and the statement of the counsel had closed the evidence of PW.1. The present petition is filed challenging the said order and the counsel seeks for an opportunity to further cross of PW.1, after explaining the Court the relevancy of these documents. At the outset, the Court can consider the prayer in this petition and if thought fit that the petitioner has to be given an opportunity to cross examine PW.1,



CrI.O.P.No.18234 of 2024

since he has the valuable right to display the evidence of victim witness.

WEB COPY

3. However, on reading the deposition of the PW.1 particularly, the cross examination done to him on 20.03.2024, this Court finds that the learned Judge had acted properly in accordance with the provisions of the Indian Evidence Act. He has been very vigilant and acting while recording the evidence and has put a vital question to the counsel who have tried to put questions irrelevant to the case. The Court cannot be a mute spectator when the witness is in the box. Evidence Act empowers the Court to prevent questioning the witness irrelevant to the fact in issue or relevant fact also questions which are put without reasonable ground. Section 152 of Indian Evidence Act empowers the Court to forbid any question or enquiry which appears to intend to insult or annoy the witness.

4. In this case, after examining the witness at length, which centres around the genealogy and division of the property among heirs, certain documents been shown to the witness. At that juncture, the Court has intervened and requested the counsel to explain how these documents are relevant to the case in hand. It is the duty of the counsel to explain the



CrI.O.P.No.18234 of 2024

relevancy, when the Court has put the questions to clarify that whether the documents introduced in the cross examination have any relevancy to the issue. Instead of explaining the relevancy, which is the duty of the counsel, but he has not inclined to conduct the case before the Magistrate and wants to transfer the case to some other Court and he has expressed his unwillingness to continue the cross examination of the witness. PW.1 is the victim of the crime. He has survived the brutal attack of the accused and he had been called by the Court to give evidence. When he was in the witness box, all questions which are not relevant been put, the Court has recorded those evidence and when some documents were sought to be introduced, it has intervened and sought for clarification.

5. Section 165 of the Indian Evidence Act empowers the Judge to put question. Section 152 of Indian Evidence Act empowers the Judge to prevent questions which are insulting or it will cause annoyance to the witness. Section 150 of Evidence Act empowers the Court to ask without reasonable grounds by any barrister, pleader, vakil or attorney, report the circumstances under which the question is put. While so, if the counsel engaged by the accused refused to explain and make a veiled threat to the Judge, he will not continue the cross examination and wants to transfer of



CrI.O.P.No.18234 of 2024

the case to another Court, the High Court cannot endorsed such attitude.

Hence the petition deserves to be dismissed. Accordingly, this Criminal

Original Petition is dismissed.

31.07.2024

Index : Yes/No

Neutral Citation : Yes/No

rpl

To

1.The Assistant Sessions Judge, Sankari

2.The Inspector of Police,
Sankari Police Station,
Salem District.

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

Dr.G.JAYACHANDRAN,J.

rpl



WEB COPY



CrI.O.P.No.18234 of 2024

CrI.O.P.No.18234 of 2024

31.07.2024