



WEB COPY



Crl.O.P.No.19055 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

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

Crl.O.P.No.19055 of 2024

and

Crl.M.P.No.11250 of 2024

Jagan

... Petitioner

Vs.

State, represented by,
The Inspector of Police,
Pallavaram Police Station,
Chennai District.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of B.N.S.S. Act, 2023, praying to set aside the order dated 22.04.2024 in Crl.M.P.No.38 of 2024 on the file of the Mahila Court, Chengalpattu and allow the above Criminal Original Petition.

For Petitioner : Mr.P.Chandrasekar

For Respondent : Mr.S.Udayakumar,
Government Advocate (Crl. Side)



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ORDER

WEB COPY The petitioner herein is one of the accused in S.C.No.171 of 2019 for the offences under Section 366(A), 376 r/w. 34 IPC. Pending trial on the file of the Mahila Court, Chengalpattu, PW1, who is the father of the victim was examined in chief on 06.10.2023. Totally there are seven accused in this case and they have engaged different counsel. The witness was not cross-examined by this petitioner. He has sought time for cross-examining the witness.

2. The witness has informed the Court that he has come to Court leaving his daughter in custody of other person to give evidence. Already been a victim of crime, he cannot repeatedly come to Court to give evidence. Recording the same, the trial Court has closed the evidence of PW1. After five years of cognizance taken, the trial has commenced and the father of the victim had come to Court on receiving witness summons. The accused who were seven in number had conveniently omitted to examine the witness, but, to harass the witness had sought time for cross-examination. When application filed under Section 311 Cr.P.C., the trial Court has rightly recorded the agony of the



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witness and reason for not entertaining the request for recalling the witness.

3. It is to be noted that the sessions trial has to be conducted on a day to day basis as contemplated under Section 309 Cr.P.C. Under sub-Section (2)(a) of Section 309 it is mandate that no adjournments shall be granted at the request of a party except where the circumstances are beyond the control of that party. Section 309(2)(c) further states that where a witness is present in Court but a party or his pleader is not present in Court or though present in Court not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the evidence of the witness and pass such orders as it think fit dispensing with the chief or cross examination of the witness, as the case may be.

4. Section 311 petition filed subsequent to dispensing with the cross-examination of the witness is bereft of reasoning. The trial Court while deciding the application in the light of the principles under Section 311 Cr.P.C has dismissed the same assigning reasons, which in the view of this Court is unassailable.



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WEB COPY 5. Hence, this Criminal Original Petition is dismissed.

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Index : Yes/No
Neutral Citation : Yes/No
dsa



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To

WEB COPY

- 1.The Mahila Judge,
Chengalpattu.
- 2.The Inspector of Police,
Pallavaram Police Station,
Chennai District.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

dsa

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