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Crl.O.P. No.20256 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM :
THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P. No.20256 of 2024

R. Chelladurai

Petitioner

vs.

The State represented by
the Inspector of Police
Central Crime Branch
LFIW – I, Gama – 3
Vepery, Chennai

Respondent

Criminal Original Petition filed under Section 528 of the Bharatiya Suraksha Nagarik Sanhita, 2023, seeking to set aside the dismissal order dated 02.07.2024 in Crl.M.P. No.22012 of 2024 in C.C. No.5716 of 2023 as against P.Ws. 1 to 3 and 5 by the Metropolitan Magistrate for Exclusive Trial of CCB Cases and CB-CID Metro Cases, Egmore.

For petitioner

Mr. N. Kumanan

For respondent

Mr. S. Udayakumar

Govt. Advocate (Crl. Side)

ORDER

The petitioner is the sixth accused in C.C. No.5716 of 2023 on the file of the Metropolitan Magistrate Court for Exclusive Trial of CCB Cases and CB-CID Metro Cases, Egmore. *Vide* order dated 02.07.2024, his application to recall P.Ws. 1 to P.W.7 was allowed by the Trial Court *qua*

<https://www.mhc.tn.gov.in/Wjudis> P.Ws.4,6 and 7 and disallowed *qua* P.Ws.1 to 3 and 5. Aggrieved by his



application being disallowed *qua* P.Ws.4,6 and 7, the sixth accused is before this Court.

2. The learned counsel for the petitioner submitted that what applies to P.Ws.4,6 and 7 squarely applies to other prosecution witnesses too. However, the Trial Court has declined to recall P.Ws. 1 to 3 and 5 who are very vital witnesses and they have to be cross-examined intensively, but, unfortunately, they could not be cross-examined earlier.

3. The learned Government Advocate (CrI. Side) submitted that this is a case of cheating and fabrication of documents. The petitioner and the other accused stand charged for the offences under Sections 420,465, 467,468, 471 and 120B IPC. Out of 11 witnesses, the prosecution has, so far, examined 7 witnesses. P.Ws. 1 to 3 and 5 were examined in chief during September and October 2022. The petitioner and the other accused did not cross-examine them immediately. The prosecution witnesses were partly cross-examined during February 2023 and thereafter, recalled and again cross-examined. While so, after examination of 7 witnesses was over, a petition was filed to recall all the 7 witnesses again. The Trial Court, considering that earlier, the recall petition was allowed in respect of P.Ws.1 to 3 and 5 and they were cross-examined, there is no sufficient



reason to recall them again. At the same time, the Trial Court has allowed the application in respect of P.Ws. 4,6 and 7. Considering the fact that the petitioner had been given adequate opportunity to cross-examine these witnesses and the petitioner having failed to cross-examine them, they cannot be recalled again and again.

4. In response to the above submission, the learned counsel for the petitioner submitted that at least P.Ws.1 and 5 will have to be permitted to be recalled, since certain vital questions have to be posed to them to contradict their versions and disprove the case of the prosecution.

5. From a perusal of the records, it is seen that P.Ws.1 to 3 and 5 were once recalled and cross-examined on 29.03.2023. Thereafter, the application to recall was filed on 12.03.2024 to recall them along with other witnesses. The Trial Court, taking note of the fact that P.Ws.1 to 3 and 5 were cross-examined on 29.03.2023 pursuant to the application filed under Section 311 Cr.P.C., has declined to entertain the second application to recall the same witnesses. The reasoning given by the Trial Court is in accordance with law and facts. This Court finds no perversity or illegality in the said order. Repeated recalling of witnesses will definitely protract the trial indefinitely. The accused are bound to avail of the opportunity to



cross-examine the prosecution witnesses when they are present. An application under Section 311 Cr.P.C. can be entertained only if sufficient cause is made out in the application or if, in the opinion of the Court, examination of witnesses is very much necessary. In the case on hand, no case is made out in the application to recall P.Ws.1 to 3 and 5. The Trial Court has observed that recalling these four witnesses will protract the trial. At the same time, as already adverted to above, the Trial Court has also allowed the recall application *qua* P.Ws.4,6 and 7 upon being satisfied that recalling them is necessary for arriving at a just decision.

This Court, therefore, upholds the order of the Trial Court and as a sequel, this criminal original petition is dismissed.

21.08.2024

cad



To:

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- 1 The Inspector of Police
Central Crime Branch
LFIW – I, Gama – 3
Vepery, Chennai
- 2 The Metropolitan Magistrate
for Exclusive Trial of CCB Cases and CB-CID Metro Cases
Egmore
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104



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DR. G. JAYACHANDRAN, J.

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