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CrL.OP.No20741 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrL.OP.No.20741 of 2024

Murali Kumar

... Petitioner

Vs.

The Inspector of Police
Bagayam Police Station,
Vellore
Vellore District
Cr.No.273 of 2018

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, to set aside the order dated 18.07.2024 made in CMP.No.8454 of 2024 inn C.C.No.329 of 2019 on the file of the Judicial Magistrate I, Vellore in so far as rejecting the petitioner's claim to examine prosecution witness PW1, PW2 P7 therein.

For Petitioner : Mr.M.R.Thangavel

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



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ORDER

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The petitioner herein is the accused in C.C.No.329 of 2019. Being aggrieved against the dismissal of his application to re-call P.W.1, P.W.2 and P.W.7, the present petition is filed challenging the order passed by the Court below on 18.07.2024.

2. The learned counsel for the petitioner submits that earlier application to re-call P.W.1, P.W.2 was filed, but same was dismissed. Thereafter, the Investigating Officer was examined as P.W.7. At that juncture, the petitioner has realized that the contradictions in the evidence of P.W.1 and P.W.2 dissolving the evidence of P.W.7 has to be highlighted and elucidated by way of cross-examination. Therefore, the petition to re-call P.W.1, P.W.2 and P.W.7 was filed. However, the trial Court has dismissed the petition recording that inspite of granting sufficient time, the learned counsel engaged by the petitioner has participated in the Court Boycott does not turned up to cross-examine the witness.



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3. In such circumstances, referring the legal maxim that no one can take advantage of his own wrong had dismissed the petition.

4. The learned counsel for the petitioner submits that the petitioner is an Auto Driver against whom initially charge under Sections 279 and 337 of IPC was framed and later altered into Sections 279 and 304(A) of IPC. Since being faced with charge of grave offence, it is essential to cross-examine the eyewitnesses and the Investigating Officer has investigated the case.

5. The fault of the Advocates for not cross-examine the witness on the day they were present cannot affect the right of the accused. This Court though find that the said submission needs attention and consideration sympathetically. The records however indicates that P.W.1 and P.W.2 were examined on 18.09.2019 and the earlier petition filed for recall these two witnesses was dismissed on 06.07.2022 then again after examination of P.W.7, the Investigating Officer on 20.10.2023, the petitioner has thought fit to revive his application to re-call P.W.1 , P.W.2 along with P.W.7. The said petition was not filed immediately, but after delay of several months. Therefore, it is apparent that it is not mere the



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boycott of the advocate which has disabled the petitioner herein to cross examine the witness, but the lea surly manner in which the petition to recall witness has caused him the dismissal. This Court finds no sufficient reasons to interfere in the order passed by trial Court.

6, For the reasons stated above, this Criminal Original stands dismissed.

28.08.2024

Vv

To

1. The Judicial Magistrate I, Vellore
2. The Inspector of Police
Bagayam Police Station,
Vellore
Vellore District
3. The Public Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

Vv

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