



CrI.O.P.(MD) No.1140 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1140 of 2024

and

CrI.M.P.(MD) No.766 of 2024

Arumugam

...Petitioner

vs

Krishnan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to set aside the order dated 08.12.2023 made in Cr.M.P.No.269 of 2023 in CC.No.141 of 2023 on the file of the Additional District Munsif, Valliyoor.

For Petitioner : Mr.V.Sasikumar

ORDER

The learned Counsel for the Petitioner submits that this Criminal Original Petition is filed to set aside the order dated 08.12.2023 passed in Cr.M.P.No.269 of 2023 in CC.No.141 of 2023 by the learned Additional District Munsif, Valliyoor.



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2.It is the further submission of the learned Counsel for the Petitioner that there is a civil suit pending between the daughter-in-law of the complainant and the accused in CC.No.141 of 2023. Those documents are related to the complaint in CC.No.141 of 2023. Therefore, the Petitioner had sought to re-call the complainant as P.W1 for further cross-examination and also sought permission of the Court to let in evidence on behalf of the accused as D.W1 by filing Cr.M.P.No.269 of 2023. After hearing the arguments, the learned Additional District Munsif, Valliyoor, had partly allowed Cr.M.P.No.269 of 2023, vide order dated 08.12.2023, thereby refusing to grant the permission to re-call the complainant as P.W1 for further cross-examination.

3.It is his further submission that the earlier Counsel, who appeared for the accused in CC.No.141 of 2023, had not cross-examined the complainant as P.W1 regarding the civil suit pending between the accused in CC.No.141 of 2023 and the daughter-in-law of the complainant. Only after the change of Counsel, the present Counsel had stated that those documents are to be marked in the trial by summoning P.W1 for further cross-examination.



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4.The submission of the learned Counsel for the Petitioner cannot be accepted in the light of the specific guidelines issued to the trial Courts by the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***. This judgment was circulated to all the High Courts in the country with a direction to circulate it to all the Trial Judges in the country through the respective High Courts. Therefore, the Trial Judges are very conscious while allowing the petitions filed under Section 311 Cr.P.C.

5.Here in this case, considering the specific circumstances, the learned Additional District Munsif, Valliyoor, had rightly allowed the petition in part, thereby not violating the guidelines issued by the Hon'ble Supreme Court regarding re-call of the prosecution witnesses. The complainant as P.W1 was already cross-examined. Now, the learned Counsel for the Petitioner submits that the earlier Counsel, who appeared for the accused before the trial Court, was changed by the accused. New Counsel had given instructions, based on which Cr.M.P.No.269 of 2023 was filed.



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6.As per the Criminal Justice System followed in this country, it is not a victim friendly and it is always accused friendly. Therefore, the accused is given the freedom to change his Counsel often and invariably in all criminal trials, the learned Counsel, who appeared for the accused, takes time to re-call the witnesses ignoring the directions of the Hon'ble Supreme Court in earlier judgments. Therefore, the Hon'ble Supreme Court had deprecated those practise and advised the High Courts that those Trial Judges, who violated the guidelines, shall be dealt with severely. Therefore, the Trial Judges now restricted the powers to be exercised under 311 Cr.P.C., Here in this case, the Petitioner before this Court is the accused. He had already engaged a Counsel and had exercised his right of defense by cross-examination of the complainant as P.W1. After the change of Counsel, he seeks to re-call the the same P.W1 to mark certain documents.

7.What had been mentioned before the learned Additional District Munsif, Valliyoor, was considered favorably by the learned Additional District Munsif, Valliyoor by observing that he can very well mark those documents through his own evidence. Therefore, the accused is not prejudiced by the order passed by the learned Additional District Munsif,



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Valliyoar. Still insisting for re-call of P.W1 cannot be permitted after the judgment of the Hon'ble Supreme Court, which had deprecated the practise of Trial Judges to re-call the witnesses on the prosecution side very often at the whims and fancies. Therefore, the order passed by the learned Additional District Munsif, Valliyoar in Cr.M.P.No.269 of 2023 in CC.No. 141 of 2023 dated 08.12.2023 is found reasonable, in the light of the judgment of the Hon'ble Supreme Court in the case of ***Vinod Kumar Vs. State of Punjab*** reported in ***CDJ 2015 SC 115***.

Accordingly, this Criminal Original Petition has no merits and it is dismissed. Consequently, connected Miscellaneous Petition is closed.

Internet:Yes./No
Index:Yes/No
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29.01.2024

To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SATHI KUMAR SUKUMARA KURUP, J.

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