



Crl.O.P.(MD)Nos.20900, 20902 and 20904 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)Nos.20900, 20902 and 20904 of 2024
and Crl.M.P(MD).Nos.12962, 12965 and 12972 of 2024

Roselin K.Thomas

... Petitioner in all petitions

Vs.

Periyasamy

... Respondent in all petitions

COMMON PRAYER : Criminal Original Petitions filed under Section 528 of BNSS, 2023, to call for the records in C.M.P.Nos.769, 768 and 772 of 2024 in CC.Nos.860, 861 and 859 of 2017 and set aside the order dated 16.11.2024 passed by the Judicial Magistrate (Fast Track Court at Magisterial Level), Karur.

In all petitions

For Petitioner : Mr.H.Elango

COMMON ORDER

The petitioner is A2 in 138 case facing trial in CC.Nos.859, 860 and 861 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial Level), Karur. The respondent is the complainant.



2. The contention of the petitioner is that the petitioner has filed a petitions under Section 311 of Cr.P.C in C.M.P.Nos.769, 768 and 772 of 2024 in CC.Nos.860, 861 and 859 of 2017 to recall P.W.1 for further cross-examination. At the time of cross-examination of P.W.1, since the petitioner's husband, namely, Jahn Lobo, was admitted in the hospital and the petitioner was nursing behind him, they could not physically present before the Court and their Advocate cross-examined in detail. Later, the petitioner came to know that another witness P.W.2 was also cross-examined and the petitioner was also questioned under Section 313 Cr.P.C and thereafter, the defence side' witness was closed. The petitioner is now in possession of her bank statement in State Bank of Trivangur to prove that the contention of the complainant that money was transferred to the petitioner and also to examine one Sebastin Babu, a close relative of her husband John Lobo, through whom only, the complainant Periyasamy was known. There is some dispute, which has been taken advantage and the petitioner has been falsely prosecuted. The petitioner submitted that on one hearing they can cross examine the witness, which was not considered by the trial Court. Hence, these present petitions.

3. Considering the materials placed before this Court, it is seen that the case is of the year 2017, already 7 years was over and yet the



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case is to be reached its finality. In this case, it is seen that P.W.1 was examined in chief on 28.11.2017 and the case was adjourned for cross-examine on 28.03.2018. In the meanwhile, from 23.03.2018 to 26.08.2019, the petitioner as well as her husband not appeared and NBW was pending. Thereafter, on 16.02.2021, P.W.1 evidence was closed. The petitioner filed C.M.P.Nos.956, 957 and 599 of 2021 under Section 45 of Indian Evidence Act for sending the cheque and pronote for comparison of signatures. The same was dismissed on 27.10.2021. Thereafter, case was posted for arguments, at this stage, the petitioner filed C.M.P.Nos.1078 &1079, 1076&1077 and 1080 & 1081 of 2022 to reopen and recall P.W.1 for cross-examination and also for defence side evidence and the same was allowed on 23.06.2022. On 26.07.2022, when the case was listed, there was no representation and hence, again NBW was issued. Only on 17.11.2023, NBW was recalled. P.W.1 was cross examined in part with much delay only on 10.01.2024 and thereafter, P.W.1 and P.W.2 were cross examined in full on 24.04.2024.

4. After several hearings, on 13.08.2024, D.W.1 fully cross-examined. Thereafter, evidence was closed on 04.10.2024. On 17.10.2024, the petitioner filed C.M.P.Nos.676, 684 and 679 of 2024 to recall D.W.1, which was allowed. but the petitioner was not present and



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hence, the petitioner's side evidence was closed on 08.11.2024 and thereafter, on the same day, the present petitions in Cr.M.P.Nos.768, 769 and 772 of 2024 were filed, without giving any particulars. Hence, on the above facts and circumstances, the trial Court had rightly dismissed the petition. This Court is not inclined to entertain these petitions and hence, these Criminal Original Petitions are dismissed. If the petitioner is further inclined to mark the bank statement and case particulars between the Sebastin Babu and John Lobo, her husband, pending before Nagapatinam Court and Krishnakiri Court, the same document can be marked by the petitioner, if he filed a petition under Section 315 of Cr.P.C, get into box and produce document. The same can be produced on the next hearing date i.e., on 05.12.2024 or, one more hearing can be given by the trial Court, if required. Thereafter, again, if the petitioner adapts any dilatory tactic, case shall be disposed of, without further delay.

Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No

29.11.2024

Index : Yes / No

Rmk

Note : Issue order copy on 02.12.2024



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To
WEB COPY

- 1.The Judicial Magistrate (Fast Track Court
at Magisterial Level), Karur.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.NIRMAL KUMAR, J.

Rmk

Order made in
Crl.O.P.(MD)Nos.20900, 20902 and 20904 of 2024

Dated: 29.11.2024