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Crl.R.C.No.121 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27/1/2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.121 of 2025

Jayamala

...

Petitioner

Vs

The State

rep. By The Inspector of Police

C 2 Elephant Gate Police Station

Chennai

...

Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w. Section 401 of Cr.P.C., to set aside the order dated 17/12/2024 in Crl.M.P.No.28370 of 2024 in S.C.No.315 of 2021 passed learned I Additional Sessions Judge, Chennai.

For Petitioner

...

Mr.G.Tamilselvan

For Respondent

...

Mr.S.Udaya Kumar

Government Advocate

(Crl.Side)

ORDER

The revision challenges the dismissal of the petitioner's application filed under Section 45 A of the Indian Evidence Acct. The petitioner is facing trial for the offence under Section 302 of the Indian Penal Code.



2. P.W.23, who was examined by the prosecution as an eye witness was cross-examined by the petitioner. The petitioner thereafter, filed a petition stating that CCTV footage which according to the prosecution recorded the presence of P.W.23 ought to have been sent for Anthropology test to confirm whether P.W.23 was really the person at the scene of occurrence, which was dismissed by the trial Court.

3. The learned counsel for the petitioner would submit that the prosecution sought to establish the presence of accused by comparing their photographs and sending it for anthropology test and that they ought to have done so even in the case of P.W.23 and therefore, the presence of P.W.23 is doubtful and in any case, since the prosecution has failed to do so, the accused in exercise of right of his defence has a right to establish that P.W.23 is not found in CCTV footage and hence cannot be treated as an eye witness. The learned counsel further pointed out that there is a contradiction in the evidence of both P.W.23 and in the evidence of I.O., as to the identity of P.W.23 in CCTV footage.

4. The learned Government Advocate would submit that the trial Court has considered all the above aspects and found that the question of whether



P.W.23 should be believed or not is a matter for trial and it is not for the defence to show as to how a particular fact has to be established. Moreover, both P.W.23 and I.O were examined during January, 2024. He further submitted that petition has been filed to delay the proceedings and therefore prayed for dismissal.

5. The only grievance of the petitioner is that though the photographs of the accused who were allegedly found in CCTV footage was compared with the pictures in CCTV footage by sending them for an anthropology test, the same was not done in the case of P.W.23 and that there is a contradiction in the evidence of P.W.23 and P.W.59 as regards where P.W.23 is found in the CCTV footage.

6. This Court on perusal of the impugned order finds that P.W.23 was examined in May 2023 and he was treated as hostile by the prosecution and both the prosecution and the defence cross-examined him. P.W.23 in fact had stated in his deposition that he was present and is also found in CCTV footage. The question of whether P.W.23 has to be believed or not is a factual issue and it is not for the defence to suggest as to how the prosecution has to establish its case. If there is any contradiction in the evidence, it is for



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the trial Court to appreciate the same on its merits. Therefore, in the said circumstances, this Court is of the view that there is no merit in the revision and hence it is accordingly dismissed.

27/1/2025

mvs.

To

1. I Additional Sessions Judge, Chennai.
2. The Inspector of Police
C 2 Elephant Gate Police Station
Chennai
3. The Public Prosecutor,
High Court, Madras.

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