



WEB COPY



CrI.O.P.No.8045 of 2023
and
CrI.M.P.No.5102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 19.04.2023	Orders pronounced on 27.04.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.8045 of 2023
and
CrI.M.P.No.5102 of 2023

Mr.Rajesh Das

... Petitioner

Vs.

State, rep. by
Superintendent of Police-II
Crime Branch CID
Pantheon Road
Egmore
Chennai-600008.

... Respondent

This Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the impugned order dated 23.03.2023 passed by the learned Chief Judicial Magistrate, Villupuram in CrI.M.P.No.1962 of 2023 in C.C. No.231 of 2021 and consequently, direct to allow the petition to recall the witnesses PW.1 - Tmt.Nisha Parthiban (LW-1) and PW.6 - Mr.Parthiban (LW-2), filed by the petitioner under section 311 of Cr.P.C. in C.C.No.231 of 2021 on the file of the learned Chief Judicial Magistrate, Villupuram.

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For Petitioner : Mr.Abdul Saleem
Senior Counsel
for
M/s.M.Vijayamehanath

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (CrI. Side)

ORDER

This petition is filed for setting aside the impugned order dated 23.03.2023 passed by the learned Chief Judicial Magistrate, Villupuram in CrI.M.P.No.1962 of 2023 in C.C.No.231 of 2021 and consequently, directing to allow the petition to recall the witnesses PW.1 Tmt.Nisha Parthiban (LW-1) and PW.6 Mr.Parthiban (LW-2) .

2. Learned counsel for petitioner submitted that petitioner filed CrI.M.P.No.1962 of 2023 in C.C.No.231 of 2021 on the file of learned Chief Judicial Magistrate, Villupuram for recalling PW.1 and PW.6. The reason for recalling PW.1 and PW.6 is that after examining them, PW.58 and PW.59



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were examined. The evidence of PW.58 and PW.59 has to be confronted with PW.1 and PW.6. There is a large conspiracy against the petitioner, wherein certain top officials conspired to spoil the carrier of petitioner. Only if petitioner is permitted to recall PW.1 and PW.6 for the purpose of further cross examination on the evidence of PW.58 and PW.59, petitioner would be in a position to expose the conspiracy against him and establish his innocence. Without considering the merits in the claim of petitioner, learned Chief Judicial Magistrate, Villupuram, dismissed the petition. Challenging the said order, this petition is filed. Learned counsel for petitioner also relied on the judgment reported in *(2013) 5 SCC 741 (Natasha Singh ..vs.. Central Bureau of Investigation (State))* for the proposition that fair trial requires, the accused must be given full opportunity of cross examining witnesses.

3. Learned Government Advocate (Criminal Side) opposed this petition on the ground that PW.1 and PW.6 were extensively cross examined by petitioner. Petitioner has the habit of filing petitions for recalling



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witnesses long after their examination in chief. Repeated examination of witnesses would be harassment to the witnesses and it would affect the conduct of the trial. Learned Chief Judicial Magistrate, Villupuram has rightly dismissed the petition.

4. Considered the rival submissions and perused the records.

5. It is seen from the petition filed under Section 311 Cr.P.C that petitioner claims that PW.1 lodged a number of complaints before PW.58 - Mr.J.K.Tripathi and PW.59 - Mr.S.K.Prabhakar. In the alleged first complaint nothing is found against petitioner and thus, that complaint was not produced by the prosecution. PW.58 - Mr.J.K.Tripathi was the Former Head of the Police Force / D.G.P. of Tamil Nadu. He was examined on 25.11.2022. On the basis of his evidence, some facts have to be confronted and elucidated through PW.1 and PW.6. Thus, it is seen from the petition averments that petitioner wants to confront PW.1 and PW.6 on the basis of evidence of PW.58. Learned counsel has also produced the contradictions



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between the evidence of PW.58, PW.59, PW.1 and PW.6 for the perusal of this Court. The evidence of PW.1 and PW.6 is also produced for the perusal of the Court. From the evidence of PW.1, it is seen that she was extensively cross examined and her evidence runs to 173 pages. Similarly, the evidence of PW.6 also runs into 17 pages. He was also extensively cross examined.

6. It is seen from the order of learned Chief Judicial Magistrate that the examination of PW.1 was commenced on 11.11.2021 and chief examination was completed on 12.11.2021. She was cross examined by A2 on 10.12.2021. Thereafter, PW.1 was cross examined on the side of petitioner from 10.12.2021 to 10.06.2022 on 13 hearings. PW.6 was examined in chief on 10.12.2021 and was cross examined on the same date. Again, PW.6 was cross examined by petitioner on 13.07.2022. Petitioner filed petition to recall PW.2 to PW.4 in CrI.M.P.Nos.1354 of 2023 and 1355 of 2023 after the examination of PW.58. Those petitions were allowed and now the present petition was filed for recall of PW.1 and PW.6. Finding that the reasons stated for recall of PW.1 and PW.6 cannot be entertained and



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WEB COPY that, petitioner has repeatedly filed petitions for recall of witnesses, learned Chief Judicial Magistrate dismissed the petition. As already indicated, PW.1 and PW.6 have been extensively cross examined by petitioner.

7. It is settled proposition of law that the evidence of one witness cannot be used for the purpose of cross examination of other witnesses for eliciting contradictions. It is pertinent to refer the judgment of Hon'ble Supreme Court reported in *(2004) 1 SCC 184 (Chaudhari Ramjibhai Narasangbhai ..vs.. State of Gujarat and others)*, wherein it is observed as follows:-

“11. Coming to the plea that the contradictions noticed by the trial Court were ocular vis-a-vis the medical evidence, we find on reading of the judgment it is not to be so, Section 145 of the Indian Evidence Act, 1872 (in short the "Evidence Act") applies when same person makes two contradictory statements. It is not permissible



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in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-a-vis statement of other witnesses. It is not open to Court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witnesses can only be contradicted in terms of [Section 145](#) of the Evidence Act by his own previous statement and not with the statement of any other witness. (See Mohanlal Gangaram Gehani v. State of Maharashtra, AIR (1982) SC 839). As was held in the said case, [Section 145](#) applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under [Section 145](#) of the



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Evidence Act only. Section 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness. ”

Therefore, prayer to recall PW.1 and PW.6 for confronting them on the basis of the evidence of PW.58 cannot be entertained.

8. That apart, if the witnesses are repeatedly examined, there bound to occur some inconsistencies and contradictions in the evidence due to fading and failing memory, long after the incident, chief examination and cross examination. If the inconsistent and contradictory evidence is allowed to be recorded, due to the fault on the part of the accused, in not immediately cross examining the witnesses, there is a possibility that that would materially affect the outcome of the case. The Hon'ble Supreme Court and this Court has time and again reiterated that witnesses should not be recalled for the purpose of cross examination again and again. In fact, the chief examination and cross examination should be completed on the



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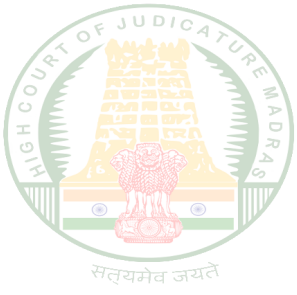
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same date. It is the dictum of the Hon'ble Supreme Court laid down in

Vinod Kumar ..vs.. State of Punjab.

9. The judgment relied by learned counsel for petitioner is not applicable to the facts of this case for the reason that that was the case where the prayer for examination of witnesses was not considered favourably. It is not the case where the prayer by petitioner for cross examination of witnesses was refused. Petitioner wants PW.1 and PW.6 to be summoned for further cross examination. Therefore, the judgment relied by learned counsel for petitioner is not applicable to the facts of this case.

10. This Court finds from the records that PW.1 and PW.6 had been extensively cross examined and that, they cannot be permitted to confront and contradict the evidence of PW.1 and PW.6 on the basis of evidence of PW.58. Learned Chief Judicial Magistrate has rightly considered the issue and dismissed the petition. This Court does not find any reason to take a different view of the matter and therefore, the order passed by learned Chief



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WEB COPY Judicial Magistrate, Villupuram in CrI.M.P.No.1962 of 2023 in C.C. No.231 of 2021 on 23.03.2023 is confirmed and this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Mra

27.04.2023
(1/2)

Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Chief Judicial Magistrate
Villupuram.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.CHANDRASEKHARAN,J.

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