

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1132 of 2015

and

M.P.No.1 of 2015

V.P.Rathinasami

.... Petitioner/3rd Party

Vs.

1. N.Gowthamsenthil Varman Respondent/Accused
2. C.Panchanathan Respondent/Complainant

Prayer:- Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., praying to set aside the order in C.M.P.No.77 of 2015 in S.T.C.No.969 of 2008 dated 16.09.2015 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, by allowing the criminal revision petition and permit the petitioner to be examined as a defence witness by appointing an Advocate Commissioner.

For Petitioner : Mr.D.Thirumoorthy
For R-1 : Mr.M.Guruprasad
For R-2 : Mr.T.Balaji

ORDER

This Criminal Revision Case is directed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Kodumudi, in C.M.P.No.77 of 2015 in S.T.C.No.969 of 2008, dated 16.09.2015.

2. It is admitted by both parties that the present petitioner is third party and he was summoned to appear before the Court on the request of the first respondent as a defence witness. Since the first respondent/accused wanted to examine the petitioner as a defence witness, he has to obey the summons of the Court to appear and to give evidence as a defence witness.

3. In this case, the learned counsel for the petitioner would contend that the present petitioner, because of his old age and undergone bye-pass heart surgery and suffering from

various ailments, has filed a petition before the learned District Munsif-cum-Judicial Magistrate, Kodumudi, to dispense with his appearance before the Court and requested to examine him as a defence witness by appointing an Advocate Commissioner. The trial Court, without analysing and considering the medical reason that the petitioner was not able to appear before the Court, dismissed the said petition and hence, the learned counsel for the petitioner prayed that the said dismissal order may be set aside. The learned counsel for the petitioner fairly conceded that he is ready to bear the expenses for the Advocate Commissioner and also the expenses of both sides, if an Advocate Commissioner is appointed.

4. In this case, the learned counsel for the respondents 1 and 2 contended that the present petitioner may be examined in Court.

5. In view of the submission made by the learned counsel for the petitioner that the petitioner underwent bye-pass surgery and since the request was made on the side of the petitioner that he has to be examined as a defence witness by appointing an Advocate Commissioner at the expenses of the petitioner, this Court is of the considered view that an Advocate Commissioner has to be appointed to examine the petitioner as a defence witness in his residence at the cost of the present petitioner. In view of this, this Court is of the considered view that the order passed by the trial Court is liable to be set aside.

6. In the result, this criminal revision case is allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Kodumudi, in C.M.P.No.77 of 2015 in S.T.C.No.969 of 2008, dated 16.09.2015, is set aside and the matter is remitted back to the trial Court and the trial Court is directed to appoint an Advocate Commissioner within a week from the date of receipt of a copy of this order for examining the petitioner as a defence witness at his residence. The trial Court is also directed to fix remuneration to the Advocate Commissioner and also to fix fees to the counsel for the complainant and accused and the present petitioner is directed to pay the remuneration so fixed by the trial Court. Both the complainant and the accused are directed to co-operate with the Advocate Commissioner so appointed by the trial Court. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate,
Kodumudi.

+1cc to Mr.R.Dineshkumar, Advocate Sr.46299

+1cc to Mr.M.Guruprasad, Advocate Sr.46445

Cr1.R.C.No.1132 of 2015

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