

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1310 of 2016

and

Crl.M.P.No.11820 of 2016

V.P.Rathinasami

.. Petitioner

vs.

1.K.Vijayalakshmi

2.D.Rajasambathkumar

.. Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against to set aside the order in C.M.P.No.192 of 2016 in S.T.C.No.361 of 2009 dated 16.08.2016, on the file of the District Munsif cum Judicial Magistrate, Kodumudi by allowing the Criminal Revision Petition and permit the petitioner to be examined as a defense witness by appointing an Advocate Commissioner.

For Petitioner : M/s.D.Thirumoorthy

O R D E R

Challenging the order of learned District Munsif cum Judicial Magistrate, Kodumudi passed in C.M.P.No.192 of 2016 in S.T.C.No.361 of 2009 on 16.08.2016, the present revision has been filed.

2. Petitioner has moved C.M.P.No.192 of 2016 on the file of learned District Munsif cum Judicial Magistrate, Kodumudi seeking examination of the petitioner as a defence witness by appointing an Advocate Commissioner. Court below, under the impugned order, dismissed such petition. Hence, this revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

4. In dismissing the petition, the Court below has reasoned as follows:

Section 284 of Cr.P.C. says that whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court of Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness. Petitioner is residing at Erode. It is said in the petition that the petitioner is suffering from Diabetics, he has undergone Heart surgery and he is advised by Doctors to take rest for three months and hence, a Commissioner has to be appointed. The petition has been filed on 28.01.2016. Six months have passed since the filing of the petition. It is not stated in the petition that the petitioner is bedridden. No medical certificate has been filed to prove that the petitioner is suffering from illness as stated in the affidavit. The Court can consider the age and the health of the petitioner at the time of adducing evidence and can order that he may adduce evidence by sitting. The petitioner has not filed the order of the Hon'ble High Court stated in his affidavit, along with this petition. Even thereafter, he has not filed the same. Hence, the contention that the petitioner has to go to the Doctor for the illness stated in the affidavit and hence, he could not attend the Court, is not acceptable. We find no error in the order under challenge.

5. This Criminal Revision stands dismissed. However, this Court, considering the fact that the case is of the year 2009, this Court directs the Court below to dispose of the case as expeditiously as possible without protraction of proceedings.

Sd/-
सत्यमेव जयते

Assistant Registrar

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Sub Assistant Registrar

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To
The District Munsif cum Judicial Magistrate,
Kodumudi.

+1cc to Mr.D. Thirumoorthi, Advocate, S.R.No.63634

ev(CO)
md(07/02/2017)

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