

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.187 of 2016
and CrI.MP.No.1219 of 2016

Ramamoorthy .. Petitioner/Accused

Vs.

Sundaram .. Respondent/Complainant

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 17.12.2015 made in Cr.M.P.No.6850 of 2015 in C.C.No.304 of 2014 on the file of the District Munsif cum Judicial Magistrate, Pappireddipatty.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : No Appearance

ORDER

The criminal revision petition is directed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Pappireddipatty made in Cr.MP.No.6850 of 2015 in C.C.No.304 of 2014 dated 17.12.2015.

2.Heard the learned counsel for the petitioner and perused the records. There is no representation on behalf of the respondent.

3.The present respondent filed private complaint under Section 200 for the alleged offences under Section 420, 147, 384 and 506(i) IPC. The private complaint was taken up on file when the cases posted for complainant side evidence, at that time without PW1 complainant getting into the box for adducing oral evidence, complainant has filed written proof evidence for chief examination. At this stage, the petitioner filed the application to reject the proof affidavit filed by the complainant.

4.In this case, the complainant has not at all examined under Section 200 Cr.PC private complaint. The complainant has to give sworn in statement at the time of giving complaint. The

complainant himself has to come before the Court and adduce oral evidence on his side, without adducing oral evidence in the Court, the complainant filed proof affidavit for chief examination as like in the civil cases. Since it is a criminal case, the petitioner has to prove his case, he has to come to the box, then only, the Court can come to the correct conclusion, the velocity, trustworthiness and also demur of the witnesses. At the time of chief examination he has to give statement voluntarily without any assistance by the counsel. At the time of filing proof affidavit he can compare with the available documents and pleadings and prepare the proof statement. In criminal cases, filing of proof affidavit for the chief examination has to be avoided for proper examination of witnesses.

5. In this case, the present petitioner filed the application to reject the proof affidavit without analysing the position of law, the trial Court erroneously dismissed the application. This Court is of the considered view in the criminal cases, the complainant is not entitled to file proof affidavit for the chief examination, the dismissal of the application by the trial court is erroneous and the order of the trial Court is liable to be set aside and the same is hereby set aside.

6. In the result, the criminal revision petition is allowed and the order passed in Cr.MP.No.6850 of 2015 in C.C.No.304 of 2014 dated 17.12.2015 is set aside. The trial Court is directed to examine the witnesses in the open Court and not by way of accepting proof affidavit and further directed to dispose of the case within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif cum Judicial Magistrate,
Pappireddipatty.

+1cc to Mr.R. Ezhilarasan, Advocate, S.R.No.

NRJK(CO)
EU(12/07/2016)

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