

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13-04-2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

CrI.R.C.No.618 of 2016

N. Manivannan Sudevan

...Petitioner

Vs.

V.P. Rathinasamy

...Respondent

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to set aside the Order dated 28-03-2016 made in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode.

For Petitioner : Mr.M. Guruprasad

O R D E R

The Petitioner/Accused has preferred the instant Criminal Revision Petition as against the judgment dated 28-03-2016 in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2015 passed by the Learned Judicial Magistrate, Fast Track Court No.I, Magisterial Level, Erode.

2. The Learned Judicial Magistrate, Fast Track Court NO.I, Magisterial Level, Erode while passing the impugned order in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2016 (filed by the Petitioner/Accused) at Paragraph No.9 had interalia observed that, '...on perusal of the records in the present case the DW1 is the complainant in this case, he was summoned by the petitioner herein and the witness was examined by the petition. Further, on perusals of the deposition of the DW1, the witness was not given any earlier statement and he is not resiles from material statement. Since, there was no earlier statement given by the DW1; hence, treating DW1 as hostile is not required in this case. Further, there is no material evidence produced by the Petitioner before this court to show that the witness has resiled form his earlier statement. Therefore, the witness cannot be treated as hostile witness. Further, this petitioner has filed this petition to prolong the case.' and resultantly, dismissed the petition.

3. Challenging the dismissal order dated 28-03-2016 in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2015 passed by the Trial Court, the learned counsel for the Revision Petitioner/Accused contend that the trial Court had committed a grave error in dismissing the petition filed under Section 154 of the Indian Evidence Act without properly appreciating the facts and circumstances of the present case.

4. The Learned counsel for the petitioner strenuously takes the plea that the petitioner/accused summoned the complainant to examine him as 'Defence Witness' and due to his illness, he was examined through the Advocate Commissioner on 02-02-2016 and at that time he had failed to disclose the true facts and gave evasive answers for the questions put by the Advocate Commissioner. Further, it is represented on behalf of the Petitioner that objections were raised and the Petitioner decided to cross-examine, D.W.1 to cull out the true facts.

5. During the last Leg of arguments, the Learned counsel for the Petitioner contends that there is no need for the Petitioner to protract the proceedings and viewed from any angle, the order passed by the trial Court in disposing the C.M.P.No.883 of 2016 is clearly unsustainable in the eye of law.

6. At this stage, this Court, on perusing the contents of C.M.P.No.883 of 2016 (filed by the Petitioner under Section 154 of the Indian Evidence Act, 1872) before the Trial Court, finds that the Petitioner at Paragraph No.3 of the said petition had mentioned the following:

"3. The petitioner/accused submits that all the cheques were filled by one and the same persons namely K.M.Luies. The power holder P.K. Velusamy also working under the complainant V.P. Rathinasamy. It is therefore to prove his case the accused side summoned the above said complainant V.P. Rathinasamy as a defense side witness. Due to illness of the witness, this Hon'ble court ordered to examine the witness through advocate Commissioner. The said V.P. Rathinasamy was examined on 02.02.2016. The accused humbly submits that at the time of chief examination, the witness has suppressed the several facts and turned as hostile witness. Therefore it is absolutely just and necessary to grant permission to the petitioner to cross examine the witness. Otherwise the petitioner will be put into great hardship and heavy loss and it is very difficult to prove the defense case."

and as such, prayed for permitting him to cross-examine the witness.

7. On behalf of the Respondent (before the trial Court), a counter was filed to the effect that in the present case, the Respondent himself is the complainant and he cannot be expected to support the version of the Petitioner. Furthermore, it is the stand of the Respondent that the complainant never made any previous statement to support the defence version of the Petitioner. Added further, the transaction itself was admitted by the Petitioner during the course of cross-examination and as such, the C.M.P.No.883 of 2016 is not maintainable on merits.

8. It is to be borne in mind that a Court of Law has a discretion under Section 154 of the Indian Evidence Act. But there are no guiding principles in this regard. In reality, the witness ought to accept an element of hostility or resile from the material statement made before an earlier authority or not be speaking the truth. Of course, there must be some material to show that the witness is not speaking the truth.

9. It cannot be ignored that whether a witness is a litigant or not. It is a matter of discretion for the Presiding Deity / the Court of law to find whether such person shows himself so hostile as to justify his cross-examination by the party calling him. No wonder, the permission under Section 154 of the Indian Evidence Act, 1872 cannot be granted either as a matter of routine or as a matter of course.

10. Indisputably, the Court has a discretion under the Section to permit the prosecution to test by way of cross-examination the veracity of the witness in regard to the (unconnected) matters elicited by the defendants in cross-examination as per decision Amrita Lal Hazra V. Emperor (1915 (42) Cal 957) that apart a Court of Law has the power to permit a party to put any questions to his own witness which might be put in cross-examination when the witness turns hostile.

11. As far as the present case is concerned, this Court on going through the impugned order dated 28-03-2016 made in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2015 passed by the trial Court is of the considered view that the Respondent himself is a Complainant in the present case and it is a matter of prudence that he cannot be expected to support the case/version of the Petitioner. Moreover, the Respondent/Complainant had never made any previous statement to support the defense version of the Petitioner. In these backdrops, the order dated 28-03-2016 made in C.M.P.No.883 of 2016 in S.T.C.No.65 of 2015 passed by the trial Court in dismissing the petition filed by the Petitioner is a flawless one.

12. Resultantly, the Revision petition fails.

13. In fine, Criminal Revision Petition is dismissed. The impugned order dated 28-03-2016 in C.M.P.No. 883 of 2016 passed by the Learned Judicial Magistrate, Fast Track Court, Erode is confirmed by this Court for the reasons assigned in this revision. It is abundantly made clear that the dismissal of the present Criminal Revision Case will not preclude the petitioner to raise all factual and legal pleas before the Trial Court at the appropriate time of final hearing of S.T.C.No.65 of 2015, on the file of the trial Court, of course, in the manner known to Law and in accordance with Law. The connected Crl.M.P.No.4326 of 2016 is also dismissed.

glp

s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

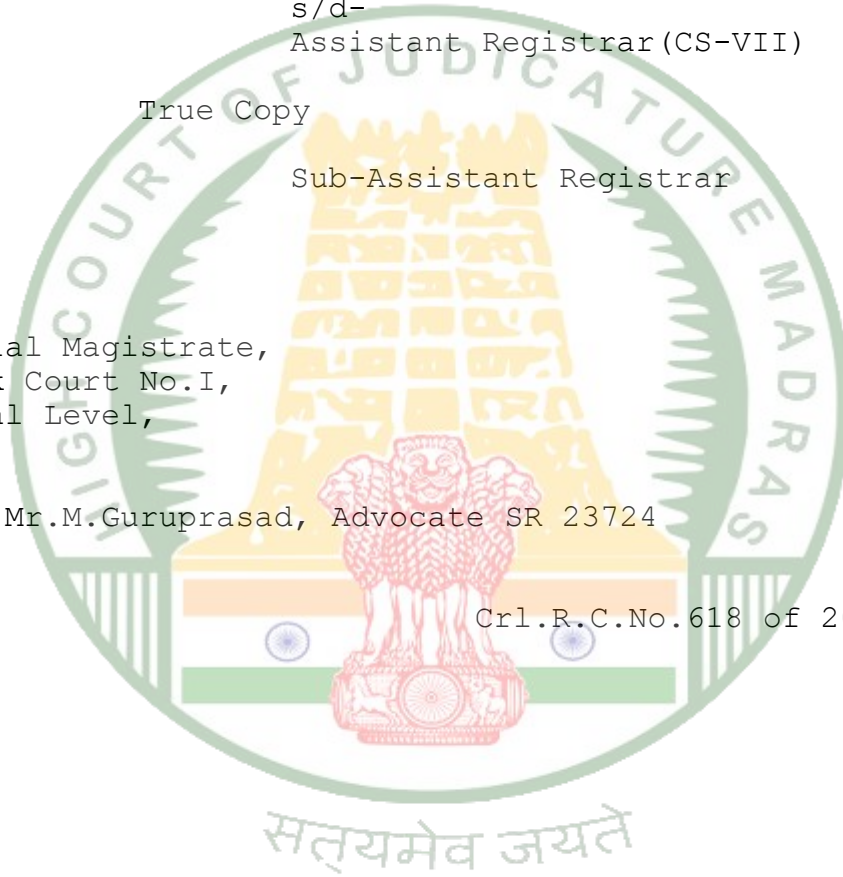
To

The Judicial Magistrate,
Fast Track Court No.I,
Magisterial Level,
Erode.

+ 1 cc to Mr.M.Guruprasad, Advocate SR 23724

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