

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13-04-2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.623 of 2016
and Crl.M.P.No.4354 of 2016

K.S. Nallathambi

...Petitioner

Vs.

D. Rajasampath Kumar

...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.880 of 2016 in S.T.C.No.680 of 2014 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.880 of 2016 in S.T.C.No.680 of 2014 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.880 of 2016 in S.T.C.No.680 of 2014 (filed by the petitioner/accused) at Paragraph No.9 had among other things had 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. According to the petitioner, the order of the Trial Court dated 28-03-2016 in dismissing the C.M.P.No.880 of 2016 in S.T.C.No.680 of 2014, is not in consonance with law. A primordial stand taken on behalf of the revision petitioner is that it is self-evident that the witness who fails to disclose the true facts before the Court-below can be examined by a party at whose instance he was summoned and it is not necessary that he should have resiled from invoking earlier statements under Section 154 of the Indian Evidence Act.

4. Advancing his arguments, the learned counsel for the petitioner takes a plea that there is no necessity for the petitioner to procrastinate the proceedings and per contra, the petitioner is facing the ordeal of trial at the instance of the respondents all these years. In any event, it is represented on behalf of the petitioner that the impugned order of the Trial Court suffers from error which has resulted in serious miscarriage of justice.

5. Admittedly, the petitioner had summoned one V.P. Rathinasamy. Because of his illness, he was examined through the appointment of an Advocate Commissioner as D.W.1. It comes to be known that the petitioner/accused sought permission before the Trial Court under Section 154 of the Indian Evidence Act to cross-examine D.W.1. There is no second opinion of yet another fact that after examining the said V.P. Rathinasamy, the Officer of the Court, the Learned Advocate Commissioner had submitted his report and the evidence of D.W.1 is very much available before the Trial Court.

6. It has to be noted that discretion to be exercised by a Court of Law to treat a person as a 'Hostile witness' is within its domain and it is not for the petitioner to file a petition and to seek a relief in this regard, as done in the present case.

7. At this stage, a cursory perusal of the counter filed by the respondent/complainant to C.M.P.No.880 of 2016 in S.T.C.No.680 of 2014 shows that the respondent had categorically averred at Paragraph No.5 that the petitioner had admitted at the time of cross-examination that amount was borrowed from V.P. Rathinasamy and also issued a cheque as a Guarantor and when the transaction itself was admitted by him during the course of cross-examination, the filing of C.M.P.No.880 of 2016 is not maintainable on merit of the case.

8. This Court has heard the learned counsel for the petitioner and noticed his contentions.

9. Insofar as the present case is concerned, it is to be pertinently pointed out by this Court that the Respondent had never made any previous statement to support the version or substantiate the case of the petitioner. Ordinarily before declaring a witness as an 'Hostile witness', there must be

atleast a semblance of material to point out that the witness as backtracked or resiled from his previous statement and also changed his loyalty to the other side.

10. In the light of foregoing discussions and also this Court on taking note of the entire conspectus of the attendant facts and circumstances of the present case which float on the surface and also bearing in mind an important fact that it is for the concerned Court or for the concerned Judge to exercise it is judicial thinking mind/discretion in allowing a request to treat a person as a hostile witness and that domain of discretion cannot to be allowed to be permitted to be exercised by means of filing of the petition on the side of the accused. Even otherwise on merits, this Court finds that there is no perversity or material irregularity or patent illegality in the impugned order dated 28-03-2016 in C.M.P.No.880 of 2016 in S.T.C.No.680 of 2014 passed by the Trial Court.

11. Resultantly, the revision petition fails and the same is dismissed. The impugned order dated 28-03-2016 made in C.M.P.No.880 of 2016 in S.T.C.No.680 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode is affirmed by this Court, for the reasons assigned in this revision. It is made clear that the dismissal of the present Criminal Revision Petition will not preclude the petitioner/accused to raise all factual and legal pleas before the trial Court in the manner known to law and in accordance with Law and to seek redressal of his grievances. The connected CrI.M.P.No.4354 of 2016 is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

glp

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

2. -do- Through The Chief Judicial Magistrate,
Erode.

+ 1 cc to Mr.M. Guruprasad, Advocate Sr.23725

CrI.R.C.No.623 of 2016

VD(CO)

EU 02.05.2016

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