

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.20312 of 2016

and CrI.M.P.No.9499 of 2016

Chennakrishnan

Petitioner

vs.

The State
Rep by the Inspector of Police
Kambainallur Police Station
Kambainallur
Dharmapuri District
in Cr.No.278/2012

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to direct the learned Principal District cum Sessions Judge at Dharmapuri to take on file the unnumbered Criminal Miscellaneous Petition No.....of 2016 bearing Register No.1308 dated 22.02.2016 in S.C.No.48 of 2014, on the file of Principal District-cum-Sessions Judge, Dharmapuri and to hear and dispose of the same in accordance with law.

For petitioner Mr.R.Thirumalai
for Mr.S.Nandhivarman

For Respondent Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking a direction to the Principal District-cum-Sessions Judge, Dharmapuri to take on file the unnumbered Criminal Miscellaneous Petition bearing Register No.1308 dated 22.02.2016 in S.C.No.48 of 2014 and dispose of the same in accordance with law.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. It is seen that the de facto complainant in this case presented an application u/s 301 Cr.P.C. in CMP SR.No.1308 of 2016 to assist the prosecution in S.C.No.48 of 2014 before the Principal District-cum-Sessions Judge, Dharmapuri, which according to the de facto complainant was not entertained by the Court, but was returned. Hence, the de facto complainant is before this Court.

4. This Court called for a report from the Principal District-cum-Sessions Judge, wherein it is stated as follows:

"I further humbly submit that the returns were made date wise in the 19 R. Petition returned on 7.3.2016 and the counsel taken on 14.3.2016 and represented on 28.3.16 and returned on 4.4.2016 and the counsel taken on 6.4.2016. On the same day, petition returned on 14.6.2016 and the counsel taken the return without mentioning the date and not yet represented. The above return are made by the bench clerk. After receiving the call for report, I enquired the bench clerk for the reason of the return, that the previous return has complied by the counsel.

I further humble submit that on 06.08.2016 trial was fixed and posted 30.08.2016. On 03.08.2016 LW1 present, but not come forward to give evidence. The Counsel for Defacto complainant represented that the Defacto complainant have not faith to this court and preferred Transfer O.P. before Hon'ble High Court. At that time, the Public Prosecutor and the Defence counsel present. This court records the statement that the defacto complainant is not willing to give evidence in this case and the same was adjourned to 08.09.2016 and 16.09.2016. On 16.09.2016 the Defacto complainant present and filed memo that Cr1.O.P.20312/16 Hon'ble High Court permitted to file 301 Cr.P.C. order on 9.9.16 and also seeking time for production of the order copy and the case adjourn to 21.9.2016. The copy of the memo and LW1 deposition enclosed."

5. From a reading of the report it appears that, the de facto complainant got into the witness box and made a very disparaging remark against the District Judge, saying that he has no faith in her. The conduct of the de facto complainant is strongly deprecated.

6. Per contra, learned counsel for the de facto complainant submitted that the de facto complainant had stated that he has no faith in the Public Prosecutor and not on the Court.

7. Be that as it may, it is the duty of the de facto complainant to give evidence in the witness box and he cannot either choose the Judge or the Public Prosecutor. However, the right of the de facto complainant to assist the prosecution cannot be taken away.

8. Under such circumstances, this Court directs the de facto complainant to re-present the petition in CMP SR No. 1308 of 2016 before the Principal District-cum-Sessions Judge, Dharmapuri, and on such re-presentation, the same shall be taken on file and orders passed thereon on merits. If the de facto complainant continues with his petulant behaviour, it is open to the trial Court to remand him to custody and take action against him under the Code of Criminal Procedure, for obstruction of justice.

With the above direction, this petition is closed. Consequently, connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Inspector of Police
Kambainallur Police Station
Kambainallur
Dharmapuri District.

2.The Principal District-cum-Sessions Judge,
Dharmapuri.

3.The Public Prosecutor
High Court, Madras.

+3 ccs to M/s.Nandivarman Advocate sr 56538,51592,51476
Crl.O.P. No.20312 of 2016

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