

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

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

Crl.O.P. No.21487 of 2016

and Crl.M.P. No.9988 of 2016

S. Ganeshamurthy

Petitioner

vs.

T. Karthik

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 24.08.2016 made in C.M.P. No.5607 of 2016 in STC No.631 of 2013 on the file of the Fast Track Court II (Magisterial level), Erode by allowing this Crl. Original Petition.

For petitioner Mr. N. Manokaran

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 24.08.2016 made in C.M.P. No.5607 of 2016 in STC No.631 of 2013 on the file of the Fast Track Court II (Magisterial level), Erode.

2. For the sake of convenience, the parties will be referred to by their name.

3. Ganeshamurthy has launched a prosecution in STC No.631 of 2013 against Karthik, for an offence u/s 138 of the Negotiable Instruments Act and the case is now pending on the file of the Judicial Magistrate, Fast Track Court No.II, Erode. It is seen that after the evidence is completed and the accused is examined u/s 213 Cr.P.C., Karthik filed an application u/s 315 Cr.P.C., for examining himself as a defence witness, which was allowed by the trial Court, by order dated 24.08.2016, challenging which Ganeshamurthy is before this Court.

4. Learned counsel for Ganeshamurthy vehemently submitted that Karthik had filed similar applications under various provisions of law earlier and those petitions were dismissed and now this petition has been filed only to protract the proceedings.

5. This Court gave its anxious consideration to the submissions made by the learned counsel for Ganeshamurthy.

6. The accused cannot be compelled to give evidence in a criminal trial. In this case, the accused himself has come forward

to waive his right of silence and wants to examine himself as a witness. The fact that the earlier applications were dismissed, cannot be a reason to deny him the right.

7. The learned counsel for Ganeshamurthy contended that Karthik had filed an application u/s 91 Cr.P.C. in C.M.P.No.2416 of 2016 calling for certain records, which was dismissed by the trial Court and in order to obviate that order, he has now filed the present petition to examine himself as a witness.

8. In the considered opinion of this Court, Karthik cannot be permitted to circumvent the order passed in CMP No.2416 of 2016 via the present petition filed u/s 315 Cr.P.C. If Karthik is able to produce those documents himself without the aid of Section 91 Cr.P.C., that cannot be prevented, unless those documents are not relevant and inadmissible.

Under such circumstances, this is not a fit case to interfere with the order passed by the trial Court. Accordingly, this petition is dismissed with a direction to the trial Court to ensure that Karthik is examined within one month from the date of receipt of a copy of this order. Connected M.P. is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gms

To

1 The Fast Track Judge II
(Magisterial level)
Erode

2 The Public Prosecutor
High Court, Madras

+1cc to M/s N.MANOKARAN, Advocate Sr.54540

CrI.O.P. No.21487 of 2016

TRM(CO)
RVR 26/10/2016