

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

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

Crl.O.P. No.22589 of 2016 & Crl.M.P. Nos.10529 & 10530 of 2016

A.R. Vivekanandan

Petitioner

vs.

M.P. Rajavelu

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 22.09.2016 made in C.M.P. No.2098 of 2016 in S.T.C. No.96 of 2014 on the file of the Fast Track Court, Magisterial Level, Thiruchengode, Namakkal District.

For petitioner Mr. N. Anand

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 22.09.2016 made in C.M.P. No.2098 of 2016 in S.T.C. No.96 of 2014 on the file of the Fast Track Court, (Magisterial Level), Thiruchengode, Namakkal District.

2 For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant respectively.

3 The complainant filed a prosecution in S.T.C. No.96 of 2014 before the Fast Track Court, (Magisterial Level), Thiruchengode, Namakkal District, for an offence under Section 138 of the Negotiable Instruments Act, 1881, against the accused. The complainant was examined-in-chief and thereafter, on 10.08.2016, he has been extensively cross-examined by the accused himself. After the case was posted for arguments, the accused has filed a petition in C.M.P. No.2096 of 2016 in S.T.C. No.96 of 2015 under Section 311 Cr.P.C. recalling P.W.1 on the ground that certain points have been omitted in the cross-examination and that the complainant should be cross-examined by the counsel. The said petition was dismissed by the Trial Court on 22.09.2016, challenging which, the accused has preferred this Criminal Original Petition.

4 Heard Mr. C. Prabhakaran, learned counsel for the accused, who submitted that the party-in-person has cross-examined the witnesses on 10.08.2016 without the aid of the counsel and therefore, an opportunity should be given to the accused to cross-examine the complainant with his counsel.

5 This is an offence under Section 138 of the Negotiable Instruments Act and not a heinous offence. The accused has extensively cross-examined P.W.1 (complainant). Recently, in State of Haryana vs. Ram Mehar and Others [2016 (8) Scale 192], the Supreme Court has held that a petition under Section 311, Cr.P.C. should not be allowed on flimsy grounds and the relevant portion from the said judgment reads thus:

"37.Recallling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix.

38.Suffice it to say, a criminal trial does not singularly centres around the accused. In it, there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for, the society seeks justice.
."

6 Thus, this Court does not find any infirmity, much less any serious infirmity, in the order passed by the Court below. If the accused wants to set up any defence, he can even submit an explanation in writing under Section 313 Cr.P.C., which shall be considered by the Court below at the time of final judgment.

With the above observation, this Criminal Original Petition stands dismissed. Connected Crl.M.Ps. are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1 The Fast Track Judge
(Magisterial Level)
Thiruchengode
Namakkal District
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to M/s.M.Anand, Advocate SR.No.57981

SDR 12.11.2016

Cr1.O.P. No.22589 of 2016



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