

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.22590 of 2016 & Crl.M.P. No.10531 of 2016

B. Gomathi

Petitioner

vs.

P. Palanisamy

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 23.09.2016 passed by the Judicial Magistrate (Fast Track Court), Tiruchengode in C.M.P. No.1983 of 2016 in S.T.C. No.151 of 2016.

For petitioner Mr. C.S. Saravanan

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 23.09.2016 passed by the Judicial Magistrate (Fast Track Court), Tiruchengode in C.M.P. No.1983 of 2016 in S.T.C. No.151 of 2016.

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

3 The complainant lodged a prosecution against the accused for an offence under Section 138 of the Negotiable Instruments Act, 1881, in S.T.C. No.151 of 2016 before the Judicial Magistrate (Fast Track Court), Tiruchengode. The complainant was examined as P.W.1 and was subjected to cross-examination by the accused on 11.08.2016 and 31.08.2016. Thereafter, the accused filed a petition in C.M.P. Nos.1983 and 1984 of 2016 to re-open the case and recall witness, respectively, on the ground that his counsel could not cross-examine the complainant on account of Court boycott. The Trial Court dismissed both the petitions on the ground that the accused had examined the complainant twice and that only with a view to protract the litigation, the said petitions were filed. Challenging the said order, this Criminal Original Petition is filed.

4 The Supreme Court, in Harish Uppal [Ex.Capt.] Vs Union of India, [(2003) 2 SCC 45], has held in unequivocal terms that the advocates have no right to boycott Courts and has declared boycott of Courts as illegal. Further, recently, in State of Haryana vs. Ram Mehar and Others [2016 (8) Scale 192], the Supreme Court has laid down the parameters for exercise of powers under Section 311, Cr.P.C. and the relevant portion from the said judgment reads thus:

"37.Recalling 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."

5 In this case, as rightly pointed out by the Trial Court, the accused has cross-examined P.W.1 on two occasions and this is not a case of heinous offence. In such view of the matter, this Court does not find any infirmity, much less any serious infirmity in the order passed by the Court below.

In the result, this Criminal Original Petition is dismissed. Connected CrI.M.P. is closed.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

- 1 The Judicial Magistrate
(Fast Track Court) Tiruchengode
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104

ksj (co)
krd 11/11

CrI.O.P. No.22590 of 2016