

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM:

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

CrI.O.P. No.22603 of 2016

Amirthin

... Petitioner/Accused

Vs.

Kumarasamy

... Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to set aside the order dated 24.08.2016 passed by the II Additional District Munsif, Bhavani in C.M.P. No.374 of 2016 in S.T.C. No.30 of 2015 and direct the II Additional District Munsif, Bhavani to provide one more opportunity to the petitioner to cross examine the respondent/complainant's side witness.

For petitioner : Mr. E.C. Ramesh

ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 24.08.2016 passed by the II Additional District Munsif, Bhavani in C.M.P. No.374 of 2016 in S.T.C. No.30 of 2015 and direct the II Additional District Munsif, Bhavani, to provide one more opportunity to the petitioner to cross-examine the respondent/complainant's side witness.

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.30 of 2015 before the II Additional District Munsif, Bhavani. The complainant was examined as P.W.1 and was subjected to cross-examination by the accused on 20.11.2015 and 26.02.2016. Thereafter, the accused filed a petition in C.M.P. Nos.374 of 2016 seeking to further cross-examine the complainant, on the ground that certain questions were omitted to be posed to the complainant at the time of cross-examination. The Trial Court dismissed the

petition on the ground that the accused had examined the complainant twice and also following the judgment of the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220], wherein, it has been that the cross-examination should be completed on the same day, the examination-in-chief is over. Challenging the said order, the accused has preferred this Criminal Original Petition.

4. 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.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."

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.

06.10.2016

This matter having been listed under the caption for being mentioned on 3.11.2016 pursuant to the order of this court dated 6.10.2016 and made herien in the presence of the aforesaid counsel on the eitherside the court made the following order:-

After the orders were pronounced, the learned counsel appearing for the petitioner made a special mention before this Court and at his request, the matter was posted today under the caption "for being mentioned".

2. Learned counsel appearing for the petitioner submitted that an opportunity may be given to the petitioner to file his written explanation under Section 313 Cr.P.C. It is trite that the accused has a right to submit his explanation in the incriminating circumstances in writing, in his examination under Section 313 Cr.P.C. Therefore, the petitioner can submit his written explanation before the trial Court under Section 313 Cr.P.C.

3. Registry is directed to incorporate the above submission in the order dated 16.10.2016 and issue a fresh order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad

To

The II Additional District Munsif
Bhavani.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.63055

Cr1.O.P. No.22603 of 2016

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