

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.24140 of 2016

K.Velmurugan

Petitioner

Vs

M.Muthukumar

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 06.10.2016 made in C.M.P.No.2698 of 2016 in STC No.2595 of 2015 on the file of the Judicial Magistrate No.II, Pollachi.

For petitioner : Mr.D.Selvaraju
For Respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 06.10.2016 made in C.M.P.No.2698 of 2016 in STC No.2595 of 2015 on the file of the Judicial Magistrate No.II, Pollachi.

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

3.The accused is facing prosecution in STC No.2595 of 2015 before the Judicial Magistrate No.II, Pollachi. After the prosecution evidence was over, the accused was questioned u/s 313 Cr.P.C. and thereafter, he filed an application in C.M.P.No.2699 of 2016 in STC No.2595 of 2015 for examination of himself and four persons as defence witnesses. The trial Court dismissed the petition, challenging which the accused approached this Court in Crl.O.P.No.16534 of 2016 to set aside the order passed by the trial Court.

4. This Court heard both sides and ultimately permitted the accused to examine one Selvaraj and Premkumar as defence witnesses. Thereafter, the accused examined Selvaraj and Premkumar as defence witnesses and followed it up by filing a fresh application in CMP No.2698 of 2016 in STC No.2595 of 2015 for examining himself as a defence witness by waiving his right u/s 315 Cr.P.C. This petition has been allowed by the trial Court on 06.10.2016, aggrieved by which the complainant is

before this Court.

5. Heard the learned counsel for the complainant.

6. Learned counsel for the complainant submitted that even in the earlier petition in C.M.P.No.2699 of 2016 that was filed by the accused before the trial Court, he had sought permission to examine himself as one of the witnesses along with four others. Learned counsel submitted that this Court in Crl.O.P.No.16534 of 2016 had permitted the accused only to examine Selvaraj and Premkumar, which means that this Court has impliedly denied the plea of the accused to examine himself as a defence witness.

7. It is true that in the petition filed by the accused in CMP No.2699 of 2016, he has included himself as one of the persons to be examined. However, while deciding Crl.O.P.No.16534 of 2016, this Court was essentially considering only the plea of the four named persons in the petition filed by the accused before the trial Court and no finding has been given by this Court with regard to the examination of the accused himself as a defence witness. It is trite that an accused cannot be compelled to give testimony in a criminal Court and that he has a qualified right of silence. When the accused himself is coming forward to waive his right u/s 315 Cr.P.C., the Court should not easily disallow it. In this case, the prosecution is u/s 138 of the Negotiable Instruments Act and there is a presumption u/s 139 of the Act, which the accused is required to dislodge. Under such circumstances, this Court does not find any infirmity in the order dated 06.10.2016 passed by the trial Court.

In the result, this petition is devoid of merits and the same is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

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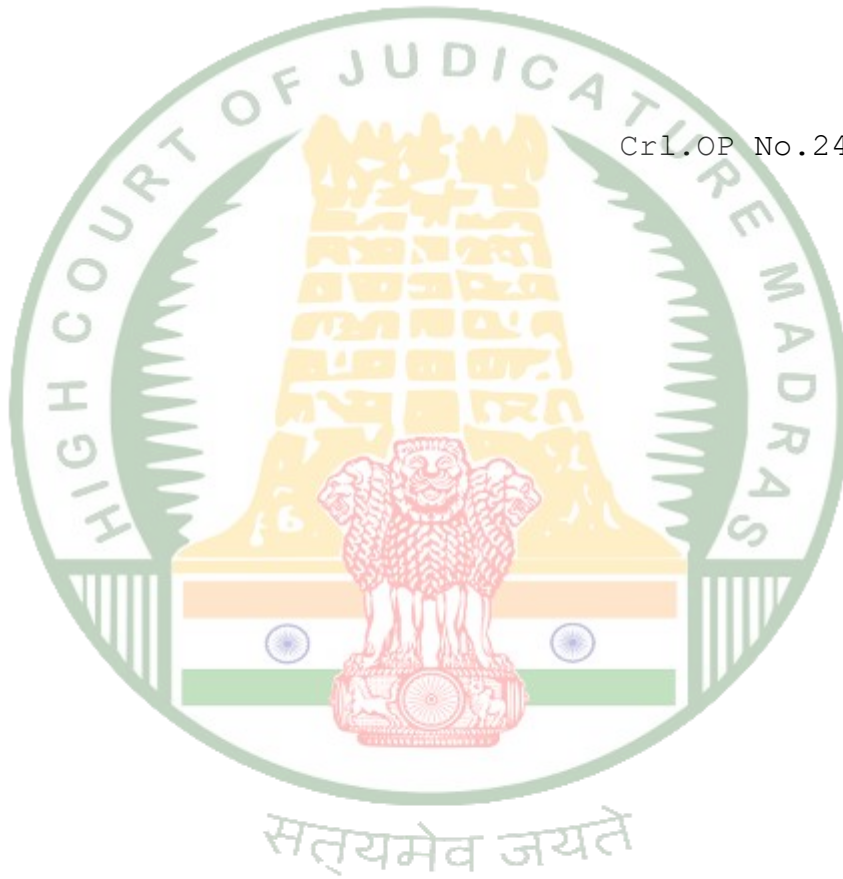
To

1.The Judicial Magistrate No.II, Pollachi.

2.The Public Prosecutor, Madras High Court, Chennai.

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CrL.OP No.24140 of 2016



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