



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.R.C(MD)No.291 of 2016
and
CrI.M.P.(MD)No.3915 of 2016

Ashokan ... Petitioner/Petitioner/Accused

Vs.

Ramadoss ... Respondent/Respondent/Complainant

Prayer: Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records of the impugned order dated 30.03.2016 passed by the learned Judicial Magistrate No.II, Kumbakonam in Cr.M.P.No.4074 of 2016 in S.T.C.No.307 of 2013 and set aside the same.

For Petitioner ... Mr.J.Selvam

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ORDER

This Criminal Revision Case is filed to call for the records of the impugned order dated 30.03.2016 passed by the learned Judicial Magistrate No.II, Kumbakonam in Cr.M.P.No.4074 of 2016 in S.T.C.No.307 of 2013 and set aside the same.

2. Heard the learned Counsel for the petitioner.

3. The petitioner is an accused in S.T.C.No.307 of 2013 before the learned Judicial Magistrate No.II, Kumbakonam. After the examination of the prosecution witnesses, the accused was examined under Section 313 Cr.P.C. and the defence witness was closed on 12.10.2015. While so, when the matter was posted for arguments, the petitioner has filed an application in Cr.M.P.No.4074 of 2016 in in S.T.C.No.307 of 2013 under Section 315 Cr.P.C. to examine himself as witness in the case, which was dismissed by the trial Court by order dated 30.03.2016. Aggrieved by which, the petitioner is before this Court.



4. Under normal circumstances, it may be necessary to issue notice to the respondent/complainant. However, if notice is issued to the complainant, it will only further protract the trial before the trial Court. In a prosecution under Section 138 of Negotiable Instruments Act, burden is cast upon the accused which has to be discharged and therefore, the accused wants to examine himself by waiving his right to silence. The trial Court should not have disallowed the petition. However, the accused also cannot be permitted to prolong the trial by filing such petitions and adopt dilatory tactics.

5. In the considered opinion of this Court, it will serve the interest of justice if this petition is allowed with certain directions. Accordingly, this Criminal Revision Petition is allowed and the order dated 30.03.2016 in Cr.M.P.No.4074 of 2016 in S.T.C.No.307 of 2013 is set aside and the petitioner is directed to appear before the trial Court on or before 08.06.2016 and furnish a bond under Section 88 Cr.P.C. for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties each for a like sum as per the decision of the Honourable Supreme Court in **Indian Bank Association Vs. Union of India** reported in **2014(5) SCC 590**. The trial Court shall permit the accused to examine himself as witness on a date fixed by the trial Court and the entire exercise shall be completed before 30.06.2016. If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand him to custody as per Section 309 Cr.P.C. and also as per the the decision laid down by the Honourable Supreme Court in **State of U.P. Vs. Sambhunath Singh** reported in **2001(4) SCC 667**. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

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To

The Judicial Magistrate No.II, Kumbakonam.

+1CC to Mr.J.Selvam Advocate Sr.No.25269

GJM/NGM/SS/AR-I-2.5.16-2p-3c

Cr1.R.C (MD) No.291 of 2016

and

Cr1.M.P. (MD) No.3915 of 2016

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