

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

CRL.RC.No.650 of 2017 & CRL.M.P.No.5916 of 2017

E.Vanitha ... Petitioner/Accused

Vs.

Smt.S.Lakshmi ... Respondent/Complainant

Criminal Revision case filed under Section 397 read with 401 of Criminal Procedure Code to set aside the order in STC.No.1125 of 2015 dated 20.04.2017 on the file of Court of the Judicial Magistrate No.1, Krishnagiri and the same is illegal to secure the ends of justice.

For Petitioner : Mr.Sankarasubbu for Mr.K.Kalaikovan

For Respondent : Mr.M.Balaji

ORDER

This revision case has been filed against the order passed by the learned Judicial Magistrate No.1, Krishnagiri in STC No.1125 of 2015 dated 20.04.2017. The petitioner herein is the accused in the said case filed by the respondent/complainant for the alleged offence under Section 138 of the Negotiable Instrument Act, 1881.

2. In the said case, examination of witness on the complainant's side was over. Thereafter, chances were given to the petitioner/accused to produce her defence side witness. However, when those opportunities were given, the petitioner has not chosen to produce any witness on her behalf. Thereafter, at the time of arguments' stage, the petitioner wanted to examine herself and in this regard, she wanted to invoke Section 315 of Cr.P.C and had requested the Trial Court to permit her to be examined as defence side witness.

3. The said petition filed under Section 315 of Cr.P.C to permit the petitioner/accused to furnish her side evidence has been rejected by the impugned order dated 20.04.2017, against which the present revision has been filed.

4. I have heard Mr. Sankarasubbu, learned counsel appearing for the petitioner and Mr. M. Balaji, learned counsel appearing for the respondent.

5. Mr. Sankarasubbu, learned counsel appearing for the petitioner, submits that the right of the accused to depose as witness is protected under Section 315 of the Code and no time limit has been prescribed under the said

provision as to at which stage the said petition is to be filed invoking Section 315 of the Code and therefore, the reason adduced by the learned Judge in rejecting the plea of the petitioner filed under Section 315 of the Code is wholly unsustainable and therefore, the impugned order is liable to be interfered with.

6.Per contra, Mr.M.Balaji, learned counsel appearing for the respondent would submit under Section 254(2) of the Code, it is for the Magistrate, if he thinks fit, may, on the application of prosecution or the accused, issue a summon to any witness directing her to attend or to produce any document or other thing. In view of the said provision, since the said discretion is available with the Magistrate to exercise his power to summon any witness either from the prosecution side or from the accused side on application, it cannot be said that merely because application was filed by the petitioner under Section 315 of the Code, it mandates that the Magistrate himself can permit the petitioner to examine herself as one of the witnesses on her side.

7.The learned counsel for the respondent would also submit that though no specific time limit has been prescribed under Section 315 of the

Code to invoke the provision on the side of the accused, it cannot be construed that at any stage of the trial, that is even after questioning under Section 313 of Cr.P.C. and at the stage of arguments, such kind of petition can be entertained under Section 315 of the Code.

8.Learned counsel for the respondent in support of his contention has relied upon the judgment of the Jharkhand High Court in the case of ***Md.Sayeed v. State of Jharkhand*** reported in **2006 CRI.L.J.4498**.

9.I have heard the learned counsel appearing for both parties and perused the materials placed on record.

10.The learned Judge in the impugned order has stated that after questioning under Section 313(1)(b) of the Code on 03.02.2012, the case was posted for defence side evidence on 10.02.2017, 21.02.2017 and 28.02.2017. Since the petitioner did not show any interest in letting in evidence on her side as defence witness in spite of enough opportunities having been given to the petitioner, the Trial Court on 28.02.2017, closed the defence side witness.

11.It is further recorded by the Trial Court Judge in the impugned order that thereafter, the case was posted for arguments on 22.03.2017 and 06.04.2017. On 06.04.2017, the complainant's side filed written argument. However, the petitioner had filed a petition under Section 205 of the Code citing medical grounds and the said petition was also allowed by the learned Trial Judge with a direction that the accused should appear before the Court whenever required. Thereafter, it was recorded that the case was again posted for arguments on accused side on 07.03.2017, 14.03.2017 and also on 20.04.2017, the day on which the present petition under Section 315 of the code was filed at last.

12.By giving all these reasons, the learned Judge has rejected the said petition filed by the petitioner, considering the same as the one to protract the proceedings and accordingly, he dismissed the said petition through the impugned order.

13.In so far as the said attitude on the part of the petitioner in not taking any defence side witness after having given number of opportunities, it cannot be said that the petitioner had not been given enough opportunity or her liberty available under the code had been denied by the Court below.

14. At the same time since under Section 315 of the Code, it has not prescribed any time limit, if such petition filed invoking Section 315 of the Code, there is no legal bar expressly available to reject it on the ground it is belated. By reading the language used in the Section 315 of the Code, this Court is of the prima facie view that when the accused seeks for accommodation to let in evidence by herself, and such permission is also sought for by invoking Section 315 of the Code, such opportunity would not normally be denied.

15. The language used in Section 315 of the Code with the words “accused of offence before a Criminal Court shall be a competent witness for the defence” and also the words used in Section 315(1)(a) that “except on his own request in writing” have underlined the importance of giving opportunity to the accused, whenever he/she seeks such a permission by filing petition in writing, invoking Section 315 of the Code.

16. Once such a petition is filed, unless convincing reason is available, normally, in the opinion of this Court, Trial Court shall not reject such petition. However, in this case in hand, though number of opportunity had been given to the petitioner after completion of questioning under Section

313(1)(b) of the Code and a number of hearings were given for making her arguments, the petitioner/accused did not choose to file a petition under Section 315 of the Code. However, at any rate, since she had filed a petition at last i.e., the stage of arguments and if the same is considered to be a delaying tactics or by thus, it is considered that the petitioner/accused is protracting the proceedings, it is left open to the trial court to permit the accused to let in his/her evidence forthwith and after taking evidence, the trial can be proceeded further for arguments.

17. Therefore, in view of the said legal position as well as the factual matrix, which involved in this case, this Court is of the considered view that such an opportunity of permitting the petitioner/accused to let in her evidence on the defence side, in view of the provision under Section 315 of the Code, in the interest of justice, is inevitable and also required. Therefore, in that view of the matter, this Court is of the view that the impugned order is liable to be interfered with.

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18. Accordingly, the impugned order is set aside. The petitioner shall be permitted to let in her evidence before the Trial Court. For the said purpose, after hearing the learned counsel appearing on both sides, this Court

fixes 12.09.2017, as the date, for the parties to appear before the Trial Court, on which date, the Trial Court may fix a date for the purpose of the petitioner/accused to let in evidence on the defence side. After taking examination in chief, the cross examination also shall be taken place on the same day.

19.If both the chief and cross examination is not able to be completed on the said day, the same shall continue on the next day itself and to be completed accordingly.

20.It is made clear that if the petitioner failed to appear before the Trial Court on the date fixed by the Trial Court or any subsequent date for completion of taking the evidence on her side, no further opportunity need to be given to her and the defence side evidence may be closed by the trial court and it can be proceeded further in accordance with law.

With these observations and directions, this criminal revision case is ordered. Consequently, connected miscellaneous petition is closed.

30.08.2017

Index:Yes

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Note : Issue order copy on 04.09.2017

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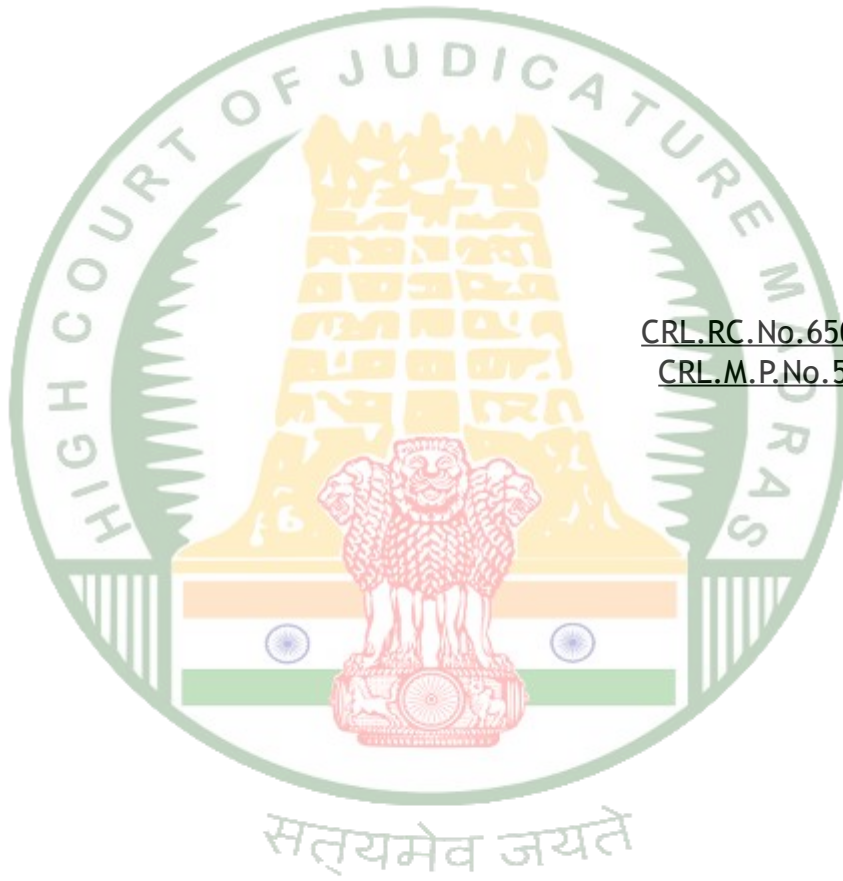
- 1.The Judicial Magistrate No.1,
Krishnagiri.
- 2.The Public Prosecutor,
High Court, Madras.



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R.SURESH KUMAR, J.

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