



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD) No.6861 of 2017
and CrI.M.P. (MD) No.4609 of 2017

K.Grishkumar

: Petitioner

-Vs-

S.Vimaladasan

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to set aside the order in Cr.M.P.No.1509 of 2017 dated 12.04.2017 in S.T.C.No.1871 of 2012 passed by the learned Judicial Magistrate No.1 (Fast Track court at Magistrate Level), Madurai District.

For Petitioner

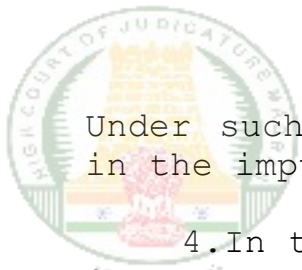
: Mr.M.Punitha Devakumar

O R D E R

One Swamidassan initiated prosecution in S.T.C.No.1871 of 2012, which is now pending before the learned Judicial Magistrate No.1 (Fast Track Court at Magistrate Level), Madurai District against K.Grishkumar for an offence under Section 138 of the Negotiable Instruments Act. Swamidassan was examined as a witness during the trial. Thereafter, Swamidassan died. In order to proceed with the prosecution, his wife Mrs.Vimaladasan filed an application to substitute her as complainant, which was allowed by the trial Court. While so, Grishkumar filed Cr.M.P.No.1509 of 2017 in S.T.C.No.1871 of 2012 for examining Mrs.Vimaladasan as a prosecution witness, which was dismissed by the trial Court, aggrieved by this, the petitioner has approached this Court.

2.Mr.M.Punitha Deva Kumar, the learned counsel appearing for the petitioner submitted that when Mrs.S.Vimaladasan filed an application for substitution, she had stated that she was an eye-witness to the transaction and therefore, she is a necessary witness in the present case.

3.In the considered opinion of the Court, it is the burden on the prosecution to examine necessary witnesses to prove their case. When the prosecution themselves had not examined Mrs.S.Vimaladasan, the accused cannot compel the examination of Mrs.S.Vimaladasan by filing an application under Section 311 Cr.P.C. In this case, the complainant has been examined and during the pendency of the case he had died. Mrs.S.Vimaladasan stepped into the shoes of Swamidassan to further take the case forward.



Under such circumstances, this Court does not find any infirmity in the impugned order warranting interference.

4. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To:

The Judicial Magistrate No.1
(Fast Track Court at Magistrate Level),
Madurai District.

SJ

PSM/KKR/SAR1/16.06.2017/2P/2C

Order made in
CRL.O.P. (MD) No.6861 of 2017
and Crl.M.P. (MD) No.4609 of 2017
08.06.2017