

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.MP.No.16357 of 2017

in

Crl.R.C.No.SR52799 of 2017

and

CRL.R.C.No.SR52799 of 2017

1. Mr.Agarchand

2. Mr.Rameshchand

... Petitioners

-Vs-

1. The Station House Officer,
Vridhachalam Police Station,
Vridhachalam-606 001.

2. Mr.Arun @ Arunkumar

... Respondents

Prayer in CRL.MP.No.16357 of 2017:-

Petition filed under Section 5 of the Limitation Act, praying to condone the delay of 40 days in filing the Criminal Revision against CMP No.3530 of 2017 in C.C.No.81 of 2014 on the file of learned Judicial Magistrate, Virudhachalam.

Prayer in Crl.R.C.No.SR52799 of 2017:-

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 06.07.2017 made in C.M.P.No.3530 of 2017 in C.C.No.81 of 2014 on the file of learned Judicial Magistrate, Vridhachalam.

For Petitioners : Mr.R.Gopinath

For Respondents : Mr.V.Arul,
Additional Public Prosecutor [R1]

ORDER

This revision challenges the order of learned Judicial Magistrate I, Vridhachalam, passed in CrI.M.P.No.3530 of 2017 in C.C.No.81 of 2014 on 06.07.2017.

2. On an application moved by respondent/accused in case pending trial in C.C.No.81 of 2014 on the file of learned Judicial Magistrate, Virdachalam, seeking a direction for examination of petitioners in the case and for production of documents, Court below allowed the petition and required the petitioners to appear before it, to be examined as witnesses by the defence and also to produce documents sought by the second respondent/A2, excepting Income Tax Returns. Aggrieved, petitioners have moved the present revision.

3. Heard learned counsel for petitioners, learned Additional Public Prosecutor for first respondent and perused the materials on record.

4. Learned counsel for petitioners submitted that it was not open to second respondent/A2 to move a petition seeking examination of witnesses, until he has entered upon his defence. Learned counsel submitted that not

having done so, second respondent/A2 ought not to have moved Crl.M.P.No.3530 of 2017.

5. Learned counsel relied on judgment of Kerala High Court in **Kamarudheen Vs.Shoukkathali [2001 (2) ALT CRL 480, 2002 CRL LJ 1289]**, wherein the following observations were made:-

“4. The question arising for consideration is whether an accused in a warrant case instituted otherwise than on a police report has got a right to compel the attendance of the complainant before the Court as a witness for the defence. According to the learned counsel for the petitioner as per the provisions contained in S.243 of the Cr.P.C. the accused can compel the attendance of any witness for the defence and “any witness” would include the complainant also. I cannot agree. No doubt, S.247 of the Cr.P.C. lays down the provisions of S.243 of the Cr.P.C. provides for the issue of process for compelling the attendance of any witness cited by the accused for the purpose of examination or cross-examination or production of any document or other thing. Though a prosecution witness can be re-summoned under S.243 at the instance of the accused, in my view, a complainant cannot be resummoned. According to me, the words ‘any witness’ in sub-s.2 of 243 would not include the complainant. It is not just and proper to compel a person to be a witness against himself. As a matter of right a party can not have the opposite party examined as a witness.”

6. This Court is unable to subscribe to the view above expressed. Article 20 (3) of the Constitution of India stipulates that no person accused of any offence shall be compelled to be a witness against himself. The same cannot be a bar to an accused seeking to examine *de facto* complainant towards proving his defence and establishing the falsity of the case alleged against him.

In the instant case, the prosecution witness has been examined and cross-examined. The very act of second respondent/A2 moving an application seeking examination of the petitioners as witnesses, would amount to their entering upon the defence. This Court is unable to appreciate the contention of learned counsel for petitioners that the Manager of the petitioners/*de facto* complainant was examined as PW-1 and all defence issues could have been raised at his cross-examination.

7. Finding no merits in the order under challenge. This CRL.MP.No.16357 of 2017 in Crl.R.C.No.SR52799 of 2017 shall stand dismissed. Consequently, CRL.R.C.No.SR52799 of 2017 is dismissed in the SR stage itself.

This Court takes note of the submission of learned counsel for petitioners that proceedings before the trial Court have been unduly delayed. This Court expects Court below to deal with the case with due expedition. Although this petition seeks condonation of delay, submissions on merits had made and this Court had proceeded to dispose of the case on merits.

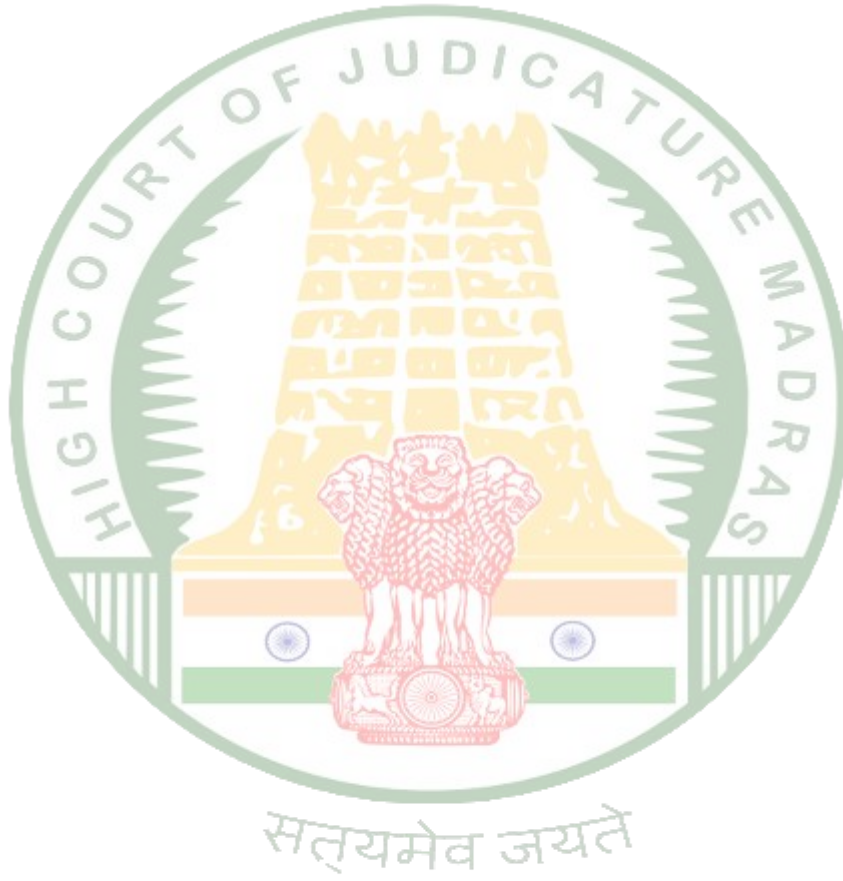
04.01.2018

Index:yes/no
Internet:yes

kmi/gm

To

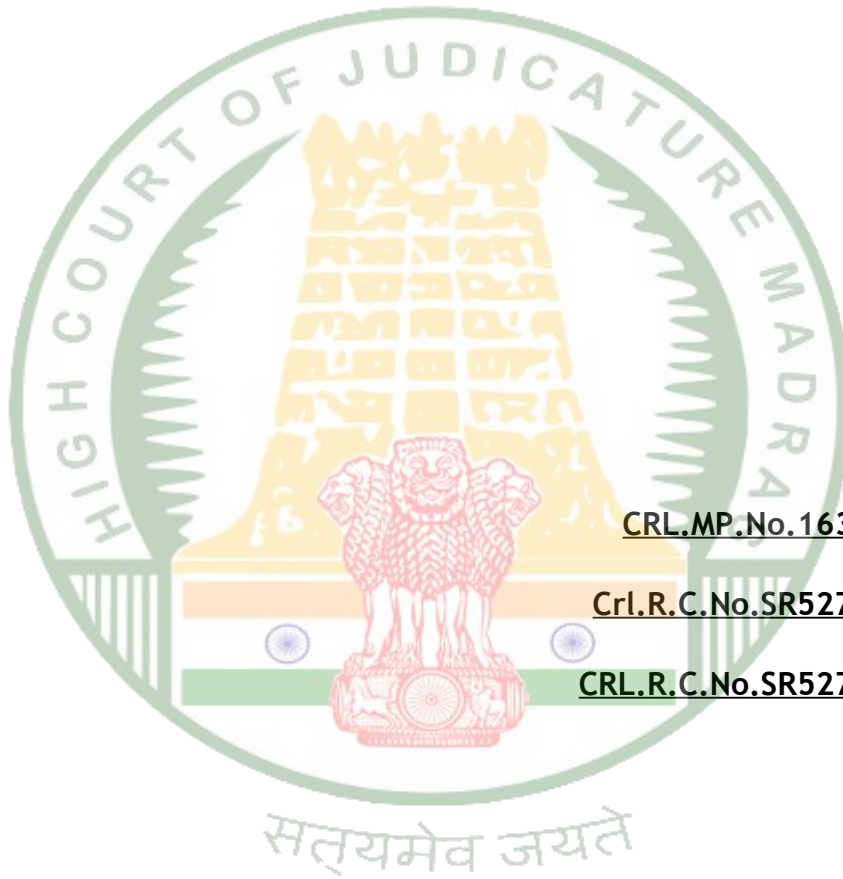
The Judicial Magistrate,
Vridhachalam.



WEB COPY

C.T.SELVAM, J

kmi/gm



CRL.MP.No.16357 of 2017
in
CrI.R.C.No.SR52799 of 2017
and
CRL.R.C.No.SR52799 of 2017

WEB COPY

04.01.2018