

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.No.17570 of 2018
and
CrI.MP.No.9123 of 2018

A.Chakravarthy

...Petitioner

vs.

S.Jayaprakash

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order dated 18.06.2018 passed in CMP.No.2145 of 2018 in C.C.No.45 of 2013 on the file of the Judicial Magistrate / Fast Track Court, Kallakurichi, Villupuram District.

For Petitioner : Mr.D.Balachandran

O R D E R

This criminal original petition has been filed to set aside the order dated 18.06.2018 passed in CMP.No.2145 of 2018 in C.C.No.45 of 2013 on the file of the Judicial Magistrate / Fast Track Court, Kallakurichi, Villupuram District.

2. The petitioner is an accused in C.C.No.45 of 2013 before the Judicial Magistrate, Fast Track Court, (Magisterial Level), Kallakurichi, for the offence under Section 138 of the Negotiable Instruments Act, 1881. After arguments, the case was closed and the complainant filed CMP.No.2145 of 2018 in C.C.No.45 of 2013 under Section 311 Cr.P.C. to examine himself as a witness for marking the written statement that is said to have been filed by the accused in a connected suit in O.S.No.109 of 2013 between the same parties in respect of the same transaction that is pending before District Court, Villupuram. The trial Court has allowed CMP.No.2145 of 2018 on 18.06.2018, aggrieved by which, the accused is before this Court.

3. Heard the learned counsel for the accused, who submitted that the trial Court ought not to have allowed the plea of the complainant at such a belated stage.

4. This Court carefully perused the impugned order. It is seen that the complainant has filed a petition under Section 311 Cr.P.C. on the ground that the averments in the written statement filed by the accused in O.S.No.109 of 2013 before the District Court, Villupuram, would be essential for deciding the

criminal case in C.C.No.45 of 2013. The complainant has further stated that he had expected the accused to get into the witness box and at that time, he would want to confront the accused with the written statement, but, since the accused did not choose to get into the witness box, he wanted to prove the written statement through his evidence. This reasoning has been strangely accepted by the trial Court, ignoring the right of the accused to remain silent in view of Section 315 Cr.P.C. In other words, the accused cannot be compelled by anyone, including the Court, to give evidence in a criminal case. Only if the accused comes forward to waive his right of silence voluntarily, he can be examined as a witness. That apart, the written statement filed in the Civil Suit is not a substantive piece of evidence to be marked as an exhibit in criminal proceedings. At the most it can be used as a previous statement to contradict the maker under Section 157 of the Evidence Act, whilst he is in the witness box. In this case, the maker of the written statement is the accused himself and he cannot be compelled to get into the witness box and to be confronted with his written statement. Marking of the written statement through the complainant will not lead to the proof of the facts stated therein. Therefore, the trial Court is directed to proceed with the trial ignoring the written statement and without placing any reliance thereon. In other words, the trial Court shall consider the evidence on record minus the written statement and decide about the culpability or otherwise of the accused.

With the above observation, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

mk

To

The Judicial Magistrate
Fast Track Court,
Kallakurichi, Villupuram District.

+ 1 cc to Mr.D.Balachandran, Advocate Sr.12683(20/07/2018)

Cr1.O.P.No.17570 of 2018

(CS-DR)
EU(20/07/2018)