

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.18844 of 2018
and CRL.M.P.Nos.9954 & 9955 of 2018

R.Somasundaram

.. Petitioner

Vs

R.Gopal

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to set aside the order passed in Crl.M.P.No.3285 of 2018 in STC.No.419 of 2017 on the file of the learned Judicial Magistrate, FTC-I, Erode.

For Petitioner : Mr.M.Ramamoorthy

O R D E R

The petitioner is accused in STC.No.419 of 2017 for an offence under Section 138 of Negotiable Instruments Act, 1881, before the Judicial Magistrate, FTC-I, Erode. After the closure of the prosecution side evidence, the accused wanted to examine one Shankar as DW1. Sufficient opportunities were given by the trial Court to the petitioner to examine the said Shankar as DW1. Since the petitioner did not produce the witness, the defence side was closed and the matter was posted for arguments and thereafter, judgment. While so, the petitioner filed CMP.No.3285 of 2018 in STC.No.419 of 2017 under Section 311 Cr.P.C. to examine DW1. This petition has been dismissed by the trial Court on 21.06.2018. Challenging which, the petitioner is before this Court.

2.Mr.Ramamoorthy, learned counsel appearing for the petitioner submitted that examination of one Shankar is essential, in order to disprove the case of the complainant.

3.This Court gave its anxious consideration to the submissions of Mr.Ramamoorthy. In the cross-examination of the complainant, the accused has not specifically suggested that it was Shankar, who was responsible for getting the impugned cheque and misused it. The trial Court gave sufficient opportunities

to the petitioner to take summons to Shankar. Summons were taken twice by the petitioner himself and they were returned as no such person. Even in the petition in CMP.No.3285 of 2018, the petitioner has not even stated the name and details of the witness, whom he wants to examine. The petitioner has merely stated that he wants to examine one DW1. Hence, this Court does not find any serious infirmity in the order passed by the trial Court.

4.However, Mr.Ramamoorthy submitted that an opportunity be given to the accused himself to examine as defence witness. Though the matter is posted for judgment, yet this Court is of the view that interest of justice will be served, if the accused is given an opportunity to waive his right of silence under Section 315 Cr.P.C. and examine himself as a witness. Beyond this, the accused cannot be permitted to examine any other witness. Hence, this Court grants permission to the accused to file an application under Section 315 Cr.P.C. within two weeks from the date of receipt of a copy of this order and if the same is allowed by the Magistrate, the accused can examine himself as a witness and subject himself to cross-examination by the complainant. Thereafter, the trial should be completed within one month.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
FTC-I, Erode.

+1cc to Mr.M.Ramamoorthy, Advocate, S.R.No.51013

CRL.OP.No.18844 of 2018

CS/31/07/18