

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.OP Nos.19855, 19856 & 19926 of 2018
&
Crl.M.P.No.10555 of 2018

V.Gopal ... Petitioner in all O.Ps

M.Devarajan
Respondent in all O.Ps

Vs ..

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to set aside the order dated 17.07.2018 made in C.M.P.Nos.3974, 3975 and 3976 of 2018 in S.T.C.No.599 of 2017 on the file of the Judicial Magistrate, Fast Track Court I, Erode.

For Petitioner : Mr.M.Guruprasad

COMMON ORDER

For the sake of convenience, the parties will be referred to as the accused and the complainant respectively.

2.It is the case of the accused that the complainant has initiated a prosecution in S.T.C.No.599 of 2017 under Section 138 of the Negotiable Instruments Act, 1881 and the same is pending on the file of the Judicial Magistrate Court I, Erode. The complainant was examined in chief on 23.01.2018 and he was cross-examined on 13.02.2018 by the accused. After the evidence was closed, the accused was examined under Section 313 Cr.P.C. and after arguments, the case was posted for judgment.

3.While so, the accused filed Crl.M.P.No.3974 of 2018, to recall PW1 for further cross-examination, Crl.M.P.No.3975 of 2018, to reopen the case and Crl.M.P.3976 of 2018, under Section 254 Cr.P.C., to examine the wife of the complainant in chief as witness. All the three cases were heard by the trial Court and were

dismissed by individual orders dated 17.07.2018, challenging which, these three petitions have been filed by the accused.

4. Heard Mr.M.Guruprasad, learned counsel for the accused who submitted that the further cross examination of the complainant is just and necessary in order to elicit several aspects of the case which was not done in the earlier cross examination. He also submitted that the wife of the complainant is a necessary witness, inasmuch as, the complainant had admitted that she was present with him during the transactions.

5. This Court gave its anxious consideration to the submissions on either side.

6. In Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288] and A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has clearly set out the parameters for re-calling and cross-examination of the prosecution witnesses. The Supreme Court held that on the mere asking by the accused even if the accused is in custody, a petition under Section 311 Cr.P.C., cannot be allowed mechanically.

7. In this case, the fact remains that the accused has cross examined PW1. Even in the petition filed by the accused in Cr1.M.P.No.3974 of 2018 under Section 311 Cr.P.C., the accused has not given any valid reason for recalling of PW1. Similarly, even in the petition in Cr1.M.P.No.3976 of 2018, also filed under Section 254(2) Cr.P.C., the accused has not stated as to how the evidence of PW1, wife of the de facto complainant will be relevant. The accused cannot straight away examine the witness without they being examined in chief. For examining her as a witness, the accused has not stated how her evidence will be relevant for deciding the fact in issue.

8. In such circumstances, this Court does not find any infirmity in the orders passed by the Court below warranting interference.

9. However, this Court is of the view that one more opportunity can be given to the accused to cross examine of PW1 on condition that he deposits half of the cheque amount before the trial Court within a period of two weeks from the date of receipt of a copy of this order. If the accused fails to deposit half of the cheque amount within a period of two weeks, he will forfeit his right to recall PW1. On such deposit, the trial Court shall recall PW1 and permit the accused to cross-examine PW1 on a particular date. The

amount deposited by the accused shall be disbursed either to the complainant or to the accused, by the trial Court, depending upon the outcome of the trial without waiting for orders from the appellate Court, irrespective of the fact whether any appeal is filed by the complainant or the accused as the case may be.

10.In the result, the original petitions in CrI.O.P.No.19855 of 2018 is partly allowed and CrI.O.P.Nos.19856 & 19926 of 2018 are dismissed.

Sd/-/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

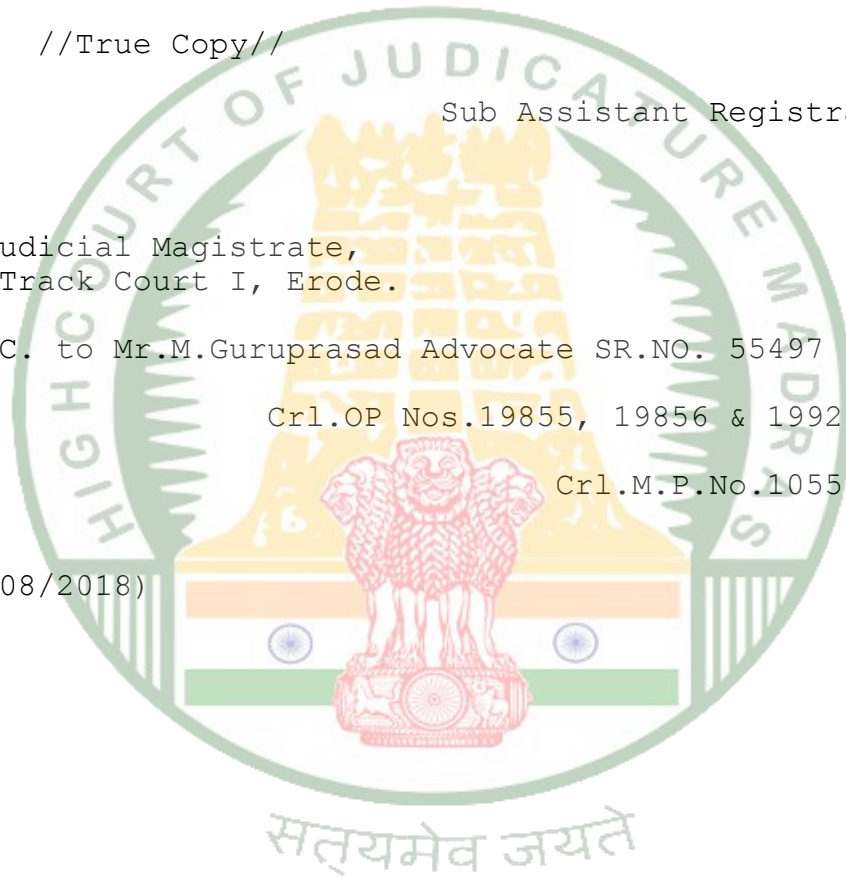
To

1.The Judicial Magistrate,
Fast Track Court I, Erode.

+1 C.C. to Mr.M.Guruprasad Advocate SR.NO. 55497

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ASK(23/08/2018)



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