

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1800 of 2019 and
Crl.M.P.Nos.1092 & 1096 of 2019

M.Ganesh ... Petitioner/2nd Accused

/Vs/

Gopalji Agrawal
represented by his
Power Agent Ramesh Babu.
63, Thattankulam Road
Madhavaram, Chennai 600 060. ...
Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the impugned order passed in Crl.M.P.No.10669 of 2018 in C.C.No.2383 of 2016, dated 20.12.2018 on the file of Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001.

For Petitioner : Mr.M.Marimuthu

For Respondent : M/s Siddharth Bahety

O R D E R

The present petition is filed by the petitioner/accused to set aside the impugned order passed in Crl.M.P.No.10669 of 2018 in C.C.No.2383 of 2016, dated 20.12.2018 on the file of the learned Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001. Thereby dismissing the Crl.M.P.No.10669 of 2018 was filed by the petitioner/accused under Section 311 of Cr.P.C., to recall himself as a witness to examine further.

2.The learned counsel appearing for the petitioner would submit that he has filed petition to reopen the evidence and to permit the petitioner to let in evidence for his side. The learned counsel further submitted that the case is pending for the defence side arguments and the earlier counsel on record appearing on behalf of the accused did not advise properly to the accused. Now, the petitioner has engaged another counsel on record who had instructed the accused to let in evidence.

Therefore, the learned counsel further submitted that the examination of the accused is very vital to the case on hand. Hence, prayed for allowing this petition.

3.Per contra, the learned counsel appearing for the Respondent/Defacto Complainant submitted that the accused was questioned under Section 313 of Cr.P.C., on 13.12.2017 itself, thereafter, the case has been periodically adjourned, at the request of the learned counsel for the petitioner/accused. The learned counsel further submitted that now the case is posted for the arguments of the defence side. The learned counsel for the respondent submitted that the petitioner has filed a petition under Section 315 of Cr.P.C., to permit the petitioner to depose as a witness before the Trial Court. It was allowed also directed the petitioner to let in evidence, the petitioner did not utilise the opportunity given by the Trial Court at the stage of the defence side arguments. Now, again, the petitioner/accused filed this petition only to drag on the proceedings. Therefore, the learned counsel for the respondent/complainant vehemently opposed on the issue granted by this Court in this petition.

4.Heard the learned counsel appearing for the petitioner/accused as well as respondent/complainant and perused all the materials available on record carefully.

5.It is seen from the records that the petitioner is the accused in C.C.No.2383 of 2016 on the file of learned Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001, the petitioner was allowed to examine as a witness, he did not utilise the opportunity for the reason that the earlier advocate had not properly advised the accused. Thereafter, the petitioner has engaged a new counsel on his side to proceed further under Section 311 of CrPC.,

6.Further, it is also seen that already the Court below has given sufficient opportunities to the petitioner to examine himself as a witness, but he was failed to utilise the opportunity. However, considering the facts and circumstances of the case, the petitioner can be given one more opportunity to examine himself as a witness in the matter.

7.In view of the above, the impugned order passed in CrI.M.P.No.10669 of 2018 in C.C.No.2383 of 2016 on the file of Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001, is set aside. Both the learned counsels are represented that the case, is posted on 11.02.2019 for defence side arguments. Therefore, the petitioner is directed to appear on 11.02.2019 before the learned Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001, to let in evidence and also the respondent with liberty to cross examine,

on the same day. At any cost the examination of the petitioner/accused should be over on the same day, failing which, the learned Metropolitan Magistrate [Fast Track Court-IV], George Town, Chennai-600 001, is directed to proceed trial in accordance with law.

8.In the result, the Criminal Original Petition stands disposed of. Consequently, connected Criminal Miscellaneous Petition Nos.1092 & 1096 of 2019 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm

To

The Metropolitan Magistrate
[Fast Track Court-IV],
George Town, Chennai-600 001.

+1 CC to Mr.M.Marimuthu, Advocate sr 10134.

Cr1.O.P.No.1800 of 2019

SP(07/02/2019)