IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.1452 & 1734 of 2015

P.S.Puspalatha ..petitioner in both petitioner/accused

Vs.

G.Gangatharan ..Respondent in both petitioner/complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the order made in Crl.M.P.No.6136 of 2014 in STC No.599 of 2009 & Crl.M.P.No.6137 of 2014 in STC No.600 of 2009 respectively dated 17.10.14 on the file of Judicial Magistrate No.III, Salem and set aside the same.

For Petitioner : Mr.R.Murugabharathi

For Respondent : Mr.S.Natana Rajan

ORDER

These criminal original petitions have been filed to call for the records pertaining to the order made in Crl.M.P.No.6136 of 2014 in STC No.599 of 2009 & Crl.M.P.No.6137 of 2014 in STC No.600 of 2009 on the file of Judicial Magistrate No.III, Salem and set aside the same.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. It is seen that the petitioner is facing a prosecution in STC.Nos.599 & 600 of 2009 before the learned Judicial Magistrate No.III, Salem for offence under Section 138 N.I.Act on the complaint filed by the respondent.

4. After the examination of witnesses on behalf of the complainant, the petitioner was questioned under Section 313 Cr.P.C and thereafter, at her request, the Bank Manager of Canara Bank was examined as Witness DW1. It is the case of the petitioner that she had given a letter to the Canara Bank for stopping payment of the amount for the cheques in the year 2009, but the Canara Bank has erroneously returned the cheques for insufficiency of funds. Therefore, the petitioner wanted to call for the letter said to have been sent by her to the Canara Bank in the year 2009 for stopping payment or inter-alia permitting her to mark a copy of the said letter through the Branch Manager of Canara Bank who was

examined as DW1. The trial Court, after hearing both sides, disallowed the petition. Aggrieved by which, the accused is before this Court.

5. The learned counsel for the petitioner/accused submitted that if the said letter is called for, then it will prove that the payment for the cheques was not stopped on account of insufficiency of funds.

6. The learned counsel for the complainant controverted this submission.

7.On a careful reading of the impugned orders passed by the trial Court, it is seen that even according to the accused, this letter was allegedly given in the year 2009. The prosecution of this case was launched in the year 2009. The petitioner/accused had ample opportunities to file an application under Section 91 Cr.P.C. during the time, when D.W.1 was examined. After a lapse of five years, the petitioner is now calling upon the bank to produce the stop payment letter alleged to have been given by her, in respect of which, there is no proof. That apart, where a cheque is dishonoured, either for insufficiency of funds or on account of stop payment, still a prosecution under Section 138 N.I.Act is maintainable.

8. As rightly pointed out by the learned trial Court, it is always open to the petitioner to examine herself as a witness for proving the said fact. The Branch Manager of Canara Bank was examined as DW1 and in his evidence before the Court, he has stated that the letter alleged to have given by the petitioner which is of the year 2009 is not available in the bank records on account of lapse of time. Therefore, the bank cannot be asked to produce something which is not available with them.

In the result, the petitions are dismissed as devoid of merits.

-Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.III,
   Salem.

2.-Do- Through the chief judicial magistrate, Salem.

+ 2 cc to Mr.Murugabharathi(sr.36504 &36505)
+ 2 cc to MR.S.Natanarajan (sr..36185)

Crl.O.P.Nos.1452 & 1734 of 2015

tm(CO)
cp 3.08.2015