

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.RC.No.851 of 2016

and

CRL.MP.Nos.6512 & 6513 of 2016

K.Tamil Selvi

..

Petitioner

Vs

S.Palanisamy

..

Respondent

Prayer:- Criminal Original Petition filed under Sections 397(1) r/w 401 of Cr.P.C to call for the records and set aside the order dated 18.03.2016 passed by Learned Judicial Magistrate II, FTC Magisterial Level, Coimbatore District in C.M.P.No.11373 of 2015 in S.T.C.No.120 of 2012 pending on the file of Judicial Magistrate II, FTC Magisterial Level, Coimbatore, Coimbatore District.

For Petitioner :Mr.I.Rathinavel

ORDER

This Criminal Original Petition has been filed to call for the records and set aside the order dated 18.03.2016 passed by Learned Judicial Magistrate II, FTC Magisterial Level, Coimbatore District in C.M.P.No.11373 of 2015 in S.T.C.No.120 of 2012.

2. Heard the learned counsel appearing for the petitioner.

3. It is seen that this petitioner is second accused in S.T.C.No.120 of 2012 for the offence under Section 138 of the Negotiable Instruments Act. Earlier, this Petitioner had filed a petition in CMP.No.2585 of 2012 under Section 45 of the Indian Evidence Act and the same was allowed by the trial Court on 28.05.2012. Pursuant to that, an application in CMP.No.3867 of 2012 was filed for appointment of an Advocate Commissioner to take the cheque for comparison. That petition was allowed and the documents were sent to the Forensic Science Laboratory. The said documents were returned on the ground that some more documents were required. Due to non-production of documents, C.M.P.No.3867 of 2012 was closed on 30.12.2014.

4. Again an application in CMP.No.2933 of 2015 was filed by the petitioner to reopen the CMP.No.3867 of 2012 on the ground that she has obtained some more documents and the same was dismissed by the trial Court on 23.06.2015. Against the order

passed by the trial Court, the petitioner has approached this Court in Crl.O.P.No.1070 of 2015 and the same was dismissed on the ground that more than a year lapsed. Now, the contention of the petitioner is that she has obtained the original Income Tax Return verification and Form 16 of LIC of India, which she wants to be sent again for comparison. Therefore, she filed the third petition in CMP.No.11373 of 2015 in S.T.C.No.120 of 2012, which was dismissed by the trial Court, aggrieved by which, the petitioner is before this Court with the present criminal revision.

5. It is true that the accused have to be given a fair opportunity to defend their case, in the light of Section 139 of the Negotiable Instruments Act. In this case, the prosecution is of the year 2012 and the plea of the accused was allowed by the trial Court on 28.05.2012. The accused herself had taken steps to send the disputed cheque along with the necessary documents to the Handwriting Expert for comparison and the same was pending with the Handwriting Expert for more than two years and only thereafter, the petition was closed. Her demand to re-open the petition was disallowed by the trial Court and this Court in Crl.OP.No.1070 of 2015 confirmed the order passed by the trial Court. Thus, the impugned order has attained finality. It is once again not open to the accused to file petition under Section 45 of the Evidence Act, as that would amount to abuse of process of law. Therefore, this Court does not find any serious infirmity in the impugned order passed by the trial Court.

In view of the above, the criminal original petition is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/
सत्यमेव जयते

Sub Asst. Registrar

sms

To

The Judicial Magistrate II,
FTC Magisterial Level,
Coimbatore District.

1 cc to Mr.T.P. Sekar, Advocate, Sr. 33222

CRL.RC.No.851 of 2016
and

CRL.MP.Nos.6512 & 6513 of 2016

LRS (CO)

kk 30/6