

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL.RC. No.949 of 2017

K.R.Kandasamy

... Petitioner/ Accused

Vs.

V.P.Balasubramani

... Respondent/Complainant

Prayer: The Criminal Revision Case has been filed under Sections 379 and 401 of the Code of Criminal Procedure praying to call for the records relating to the order dated 02.06.2017 made in C.M.P.No.3441 of 2017 in S.T.C.No.2613 of 2013 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : Mr.D.Gopal

For Respondent : Mr.C.Iyyapparaj
(Additional Public Prosecutor)

ORDER

This Criminal Revision Case has been filed to call for the records relating to the order dated 02.06.2017 made in C.M.P.No.3441 of 2017 in S.T.C.No.2613 of 2013 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

2. This Criminal Revision has been filed against the order passed by the learned Judicial Magistrate No.I, Gobichettipalayam in C.M.P.No.3441 of 2017 in STC No.2613 of 2013 dated 02.06.2017.

3. The short facts which lead to file this criminal revision is that the petitioner being accused in the said STC No.2613 of 2013 filed under section 138 of the Negotiable Instrument Act, had moved the trial court by filing the application under section 45 of the Evidence Act, to refer the disputed cheque for comparison of signature of the petitioner with documents signed in the court.

4. The said petition was heard and ultimately it was rejected by the trial court. Aggrieved over the said order, the present revision has been filed.

5. I have heard the learned counsel appearing for the petitioner.

6. Though notice has been served and the name and full address of the respondent has been printed in the cause list none appears for the respondent.

7. The learned Judge in the order impugned has given reasons for rejection of the petitioner's plea to the effect that the petitioner for similar

relief had filed a petition under section 45 of the Indian Evidence Act in C.M.P.No. 6091 of 2015 and the said application had been dismissed.

8. The learned Judge would further state that as against the said dismissal order, the petitioner had approached this court, by filing Crl.R.C No.316 of 2016 and by order dated 09.01.2017 the said Criminal Revision was dismissed as withdrawn. Thereafter, the learned Magistrate has stated that, since already the petitioner had filed the petition for similar relief which was negatived by the trial court and as he approached this court where also, he withdrawn the said revision case and accordingly it was dismissed for the same relief, the petitioner once again filed the present petition and the present petition can be construed only to delay or drag on the proceedings. Only on these reasons the trial court has rejected the petitioner's plea and accordingly, the impugned order was passed.

9. The learned counsel appearing for the petitioner has submitted that the earlier revision case i.e., Crl.Rc.No.316 of 2016 was withdrawn by the petitioner as at the time the petitioner was not in the position to have document for the purpose of comparison and therefore the same was withdrawn and accordingly it was dismissed.

10. Therefore, the said stand cannot be compared with the present stand where the petitioner is now able to produce documents for the purpose of comparison of signature. Therefore the earlier order of dismissal /withdrawal on the part of the petitioner in the said CrI.R.C.No.316 of 2016 cannot be shown as a ground for rejection of the present petition. Now the petitioner once again invoked section 45 of the Indian Evidence Act and therefore for the said reason alone the impugned order passed cannot be sustained and therefore interference of this court is absolutely necessitated.

11. The said submission made by the learned counsel cannot be accepted by this Court as it is settled law that the contents available in the order alone will be taken into account. The order cannot be interpreted by the petitioner that the petitioner had intention to withdraw the said revision case on the said conditions. Once it is withdrawn he would not be entitled to invoke the provision once again and file a similar petition for the same relief.

12. A perusal of the order dated 09.01.2017 merely states that the learned counsel appearing for the petitioner seeks permission of this Court to withdraw the revision and he has also made an endorsement to the effect. Recording the said statement, the Criminal Revision is dismissed as withdrawn.

13. From the above said order it can very well be inferred that the said withdrawal has been made on the own volition of the petitioner. He has not reserved any right to file a similar petition on the same cause of action or same relief before the trial Court. Therefore the present submissions made by the learned counsel for the petitioner in this petition cannot be accepted and therefore this court finds absolutely there is no infirmity or irregularity with the impugned order.

14. Accordingly this Criminal Revision case is dismissed.

17.08.2017

Index:Yes/No
Internet:Yes/No

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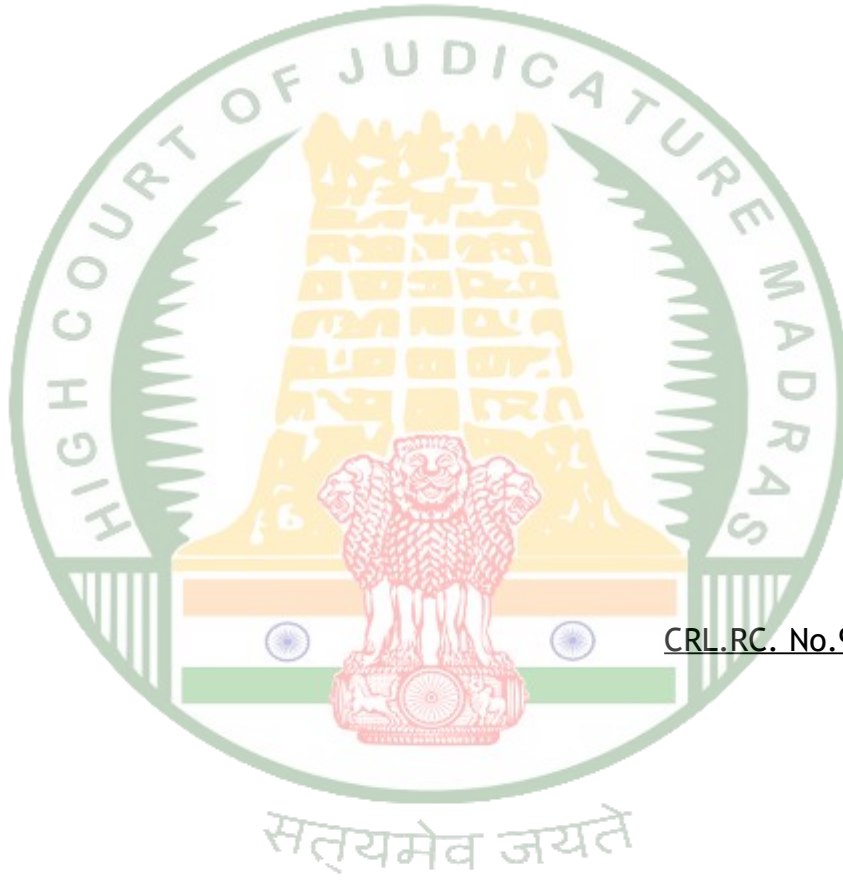
Copy to:

1. The Judicial Magistrate No.1,
Gobichettipalayam.
2. The Public Prosecutor,
High Court, Madras.

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R.SURESH KUMAR,J

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CRL.RC. No.949 of 2017

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