

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2017

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.2362 of 2016

and

Crl.M.P.No.1237 of 2016

V.Bhuvaneswari

.. Petitioner

Vs.

M.Vasuki

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order dated 04.01.2016 made in C.M.P.No.8081 of 2015 in S.T.C.No.449 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.I.C.Vasudevan

ORDER

This petition has been filed to set aside the order dated 04.01.2016 passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in C.M.P.No.8081 of 2015 in S.T.C.No.449 of 2013.

2.The case of the petitioner is that a private complaint was instituted by the respondent against the petitioner for the alleged offence punishable under Section 138 of the Negotiable Instruments Act and the same was taken on file as S.T.C.No.449 of 2013 by the learned Judicial Magistrate No.I, Erode. Pending the same, the petitioner has filed a petition in CMP.No.8081 of 2015 under Section 254(2) Cr.P.C seeking permission to examine the witnesses numbering 4 as mentioned in the said petition and mark certain documents through them. However, by order dated 04.01.2016, the trial court has partly allowed the petition by permitting the petitioner to examine the second witness alone and has partly dismissed the petition, in respect of other witnesses. Aggrieved over the same, the petitioner is before this Court with the present petition for the relief as stated supra.

3.Learned counsel for the petitioner submitted that to substantiate her plea that there is no legally enforceable debt,

the petitioner should have examined the witnesses mentioned in Section 254(2) Cr.P.C petition and marked certain documents through them. However, without appreciating the petitioner's contention, the trial court has dismissed her petition seeking permission to examine the witnesses and mark the documents.

4.Per contra, learned counsel for the respondent submitted that the trial court has rightly rejected the petition filed by the petitioner and the same does not call for any interference by this Court.

5. Heard both sides and perused the records.

6.The criminal case in STC No.449 of 2013 on the file of the learned Judicial Magistrate No.I, Erode, is arising out of the private complaint filed by the respondent against the petitioner for the offence punishable under Section 138 of the Act. Pending the same, the petitioner filed CMP.No.8081 of 2015 under Section 254(2) Cr.P.C to examine four witnesses and mark certain documents through them. The trial court has granted permission to the petitioner to examine the second witness alone and has dismissed the petition in respect of other witnesses. Hence, this petition.

7.Though the petitioner has sought for examination of witnesses 1, 3 and 4 and marking six documents through the first witness in the petition filed under Section 254(2) Cr.P.C, during the course of argument, learned counsel for the petitioner restricted the same and sought permission for examination of witnesses 1 and 3 alone, who are the Bank Manager, IOB, Surapatti Branch, Erode and one V.G.MohanKumar, husband of the complainant respectively. Insofar as the documents are concerned, he sought permission to mark the document nos.1 and 2 as stated in Section 254(2) Cr.P.C petition, through the first witness. Learned counsel for the respondent has no serious objection in granting such relief.

8.In view of the above, this Court is inclined to dispose of this petition, in the following terms:

(i)the order dated 04.01.2016 passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in CMP.No.8081 of 2015 in STC No.449 of 2013, is set aside, insofar as the rejection of examination of witnesses 1, 3 and 4 and mark certain documents through them, is concerned.

(ii)The petitioner is permitted to examine the witnesses 1 and 3, i.e., Bank Manager and the husband of the complainant alone.

(iii) the petitioner is permitted to mark the document Nos.1 and 2 as stated in Section 254(2) Cr.P.C petition, i.e., current account of M/s.M.V. Transport rep. by its Proprietor M.Vasuki and savings account of the complainant, through the first witness.

(iv)The cross examination of those witnesses and marking of

those documents shall be completed on or before 05.02.2017.

9. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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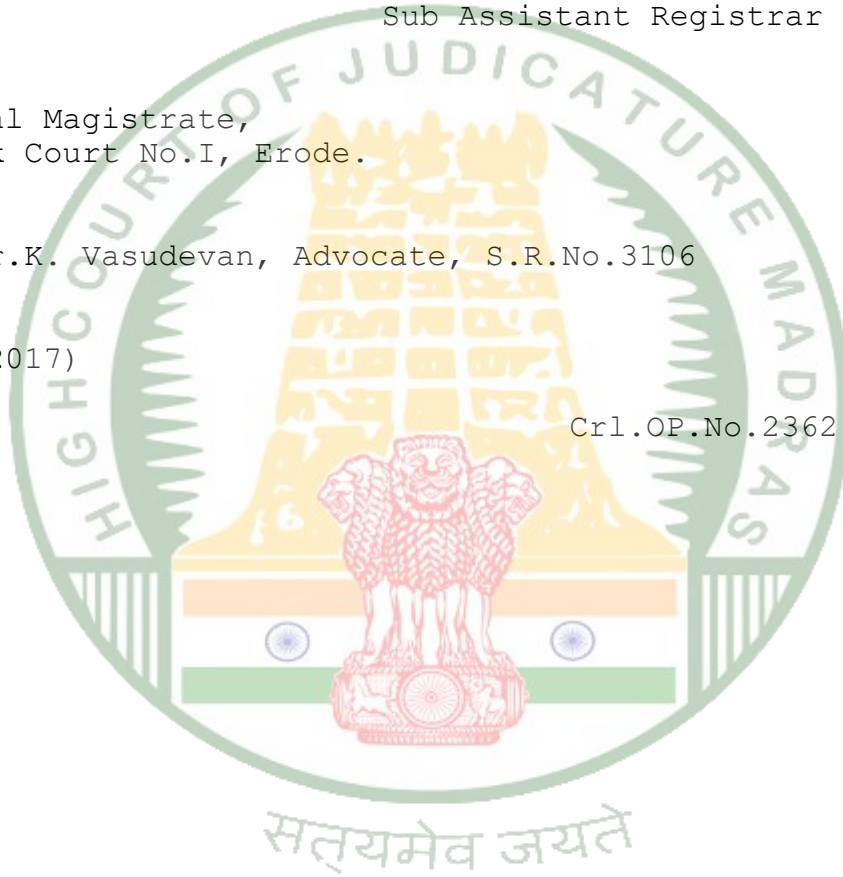
Sub Assistant Registrar

To
1. Judicial Magistrate,
Fast Track Court No.I, Erode.

+1cc to Mr.K. Vasudevan, Advocate, S.R.No.3106

GMI (CO)
MD(19/01/2017)

Cr1.OP.No.2362 of 2016



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