IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.11.2018
CORAM
THE HONOURABLE MR. JUSTICE V.PARTHIBAN
Crl.R.C.No.1157 of 2018
and
Crl.M.P.No.13494 of 2018

Premalatha ... Petitioner/ Petitioner /Appellant

vs.

Mery Rezina ... Respondent/ Respondent / Respondent

Criminal Revision Petition filed against the order dated 07.09.2018, made in C.M.P.No.137 of 2018 in C.A.No.116 of 2018, on the file of the II Additional Sessions Judge, Erode.

For Petitioner : Mr.T.Gowthaman

For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Revision Petition is directed against the order dated dated 07.09.2018, passed in C.M.P.No.137 of 2018 in C.A.No.116 of 2018, by the II Additional Sessions Judge, Erode.

2.The petitioner filed a petition in C.M.P.No.137 of 2018 in C.A.No.116 of 2018, under Section 45 r/w. Section 73 of the Code of Criminal Procedure, 1973, seeking to send Ex.P1 and Ex.D1 to the handwriting expert, Forensic Department, Chennai, for expert opinion. The learned II Additional Sessions Judge, Erode, has dismissed the said petition, holding that the petitioner has already filed C.M.P.No.2215 of 2018 in STC No.468 of 2012 for the same relief and the said petition was dismissed by the trial Court on the ground that there is cloud in the admitted signature of the petitioner; the petitioner also has not filed any review petition against the said order and no new document has also been filed to entertain the petitioner's prayer. Aggrieved by the said order, the petitioner has filed the present Criminal Revision Petition.

3.Heard the learned counsel for the petitioner and the learned Government Advocate for the Respondent.

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4.A perusal of the records would go to show that the petitioner has already filed a Criminal Revision Petition before this Court in Crl.R.C.No.517 of 2018, challenging the order dated 26.3.2018, passed in C.M.P.No.2215 of 2018 in S.T.C.No.468 of 2012. The said revision case was dismissed by this Court, vide order dated 05.06.2018, holding that the main S.T.C. has already been disposed of by the Magistrate and as against the said order an appeal also has been filed. As such, the petitioner was given liberty to move appropriate application in the appeal and in such an event, the lower Court was directed to dispose of the said application in accordance with law.

5.Pursuant to the said order passed by this Court in Crl.R.C.No.517 of 2018, the petitioner has filed Crl.M.P.No.137 of 2018 in Crl.A.No.116 of 2018 and the said petition was dismissed by the Sessions Court, Erode.

6.The learned counsel for the petitioner contended that the lower appellate Court, without taking note of the direction issued by this Court in Crl.R.C.No.517 of 2018, dated 05.06.2018, has erroneously dismissed the petition filed by the petitioner and as such, the order impugned is liable to be set aside.

7.Taking into consideration the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, this Court is of the view that the lower appellate Court has not referred to the earlier order passed by this Court in Crl.R.C.No.517 of 2018, dated 05.06.2018 and therefore, the order dated 07.09.2018, passed in C.M.P.No.137 of 2018 is set aside and the matter is remanded to the lower appellate Court with a specific direction to consider the application afresh and dispose of the same on merits and in accordance with law. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

To
1.The II Additional Sessions Judge, Erode.
2. The section officer,
VR Section,High court,Madras
+1cc to Mr. T.Gowthaman, Advocate SR.No. 80353
+1cc to Mr.M.Guru Prasad , Advocate SR.No. 80824

Crl.R.C.No.1157 of 2018

ASK(04/01/2019) A.SK(24/01/2019)

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