

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.Nos.26402 & 26407 of 2018
and
Crl.M.P.No.15185 of 2018

T.Gopal

... Petitioner
in both Petitions

Vs.

S.Geetha

...Respondent
in both Petitions

Prayer: Criminal Original petitions filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 28.09.2018 passed in C.M.P.Nos.5470 & 5471 of 2018 in S.T.C.No.153 of 2016 on the file of Judicial Magistrate, Fast Track Court No.I, Erode, respectively.

For Petitioner : Mr.S.Kaithamalai Kumaran
in both Petitions

C O M M O N O R D E R

These petitions have been filed challenging the order passed by the Court below, dismissing the application filed by the petitioner to re-open and examine one Mr.Angappan, as a witness on the side of the complainant.

2. The learned counsel for the petitioner would submit that the petitioner is the complainant and the complaint is filed under Section 138 of the Negotiable Instruments Act. The trial was completed in this case and at the stage of arguments, the petitioner filed the above application on the ground that the respondent has taken a stand that the neighbor of the respondent and this petitioner had obtained the cheque book issued by ICICI Bank, from the postman and by utilising the cheque leaf from the cheque book, the signature of the respondent has been forged.

3. In this regard, the respondent had examined the Superintendent of Post Offices, Tirupur as D.W.3. The said witness was also cross-examined by the petitioner. However, the petitioner wanted to call the concerned postman namely Mr.Angappan, also as a witness in order to substantiate his case. Therefore, the present petition was filed to re-open and to examine the witness.

4. This Court has gone through the materials placed before it. It is seen that the Superintendent of Posts was examined as D.W.3. He was also cross-examined by the petitioner and specific questions have been put to him by pointing out to Ex.D.5. Ex.D.5 was the report of the enquiry committee, before which the statements were taken from the said Mr.Angappan. For the pointed question that was put by the petitioner as to whether Mr.Angappan accepted the fact as to delivery of the cheque book to the wrong persons, the Superintendent of Posts has categorically stated that Mr.Angappan had denied about the same.

5. Presently, the petitioner wants to examine the same Mr.Angappan on the said issue. Obviously, Mr.Angappan is going to come before the Court and take the very same stand in line with the stand taken by him before the Enquiry Officer. Therefore, no useful purpose will be served by examining Mr.Angappan, in this case, in view of the fact that the Superintendent of Posts, Tiruppur has already been examined and the entire records pertaining to the disciplinary proceedings have already been marked before the Court below. Therefore, the evidence and the concerned records will be subjected to appreciation of evidence by the Court below, while arriving at a conclusion in this case. It is true that the Court below while deciding the application, has given a finding to the effect that Mr.Angappan has delivered the cheque books to wrong persons and disciplinary action has been taken against him in that regard. The learned counsel for the petitioner is more aggrieved by this finding. In the considered view of this Court, the finding given by the Court below is only a prima facie finding while deciding the application filed by the petitioner. The said finding will have absolutely no bearing when the main case is decided by the Court below. The Court below has to obviously consider the entire evidence on record (both oral and documentary) and consider the same on its own merits and in accordance with law. The Court below will not be influenced by the finding given at the time of dismissing the application.

6. This Court, does not find any illegality or infirmity in the order passed by the Court below. The Superintendent of Posts, Tiruppur has been sufficiently cross-examined by the petitioner and there is no requirement to call Mr.Angappan to the box for the very same purpose.

7. The case S.T.C. is of the year 2016. Therefore, this Criminal Original Petitions are disposed of with a direction to the Court below to complete the proceedings within a period of one month from the date of receipt of

a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

nmm/dss

To

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

+1cc to Mr.S.Kaithamalai Kumaran , Advocate SR.No. 78833

Cr1.O.P.Nos.26402 & 26407 of 2018
and
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ASK(22/11/2018)