

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27522 of 2018
and
Crl.M.P.No.15875 of 2018

Mrs.Annapoorani Hariharan

...petitioner/Accused

..Vs..

M/s.P.S.APPARELS (INDIA),
Rep. by its Admin. Manager,
Mr.K.Rajangam,
No.15, Race Course Road,
Guindy, Chennai-600 032.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.4080 of 2018 in C.C.No.1180 of 2015 dated 25.09.2018 by the learned Fast Track Court No.II, Egmore, chennai.

For Petitioner : Mr.S.Vinoth Kumar

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner under Section 91 Cr.P.C. The petitioner is facing trial before Court below for offence under Section 138 of Negotiable Instruments Act, the petitioner has already cross examined PW1 in this case. Subsequently, the petitioner filed a petition in Crl.M.P.No.4080 of 2018, seeking for the production of Memorandum of Understanding dated 02.02.2011 and the statement of accounts for the period from March 2011 to March 2013.

2. This petition has been dismissed by the Court below on the ground that PW1 in his evidence stated that he is unaware about the particulars of the Memorandum of Understanding and he is not sure about the availability of the said document. The

Court below has also given a finding to the effect that the petitioner can always produce his books of accounts in order to show the transactions that has taken place between the petitioner and the respondent.

3. The learned counsel for the petitioner would submit that the documents are required in order to rebut the presumption under Section 139 Negotiable Instruments Act.

4. The petitioner has put sufficient questions to PW1 with regard to the Memorandum of Understanding and books of accounts maintained by the respondent. The petitioner has also taken efforts to make the other side produce the Memorandum of Understanding and the books of accounts. In spite of the same, if the respondent has not produced the same, it is left open to the Court to come to its own presumption. Under Section 114 (g) of the Indian Evidence Act. The petitioner cannot force the respondent to produce any document.

5. The learned counsel for the petitioner would submit that the cross examination of PW1 was not completed and it was closed only in view of the fact that the present petition was filed before the Court below. The learned counsel would submit that liberty must be granted to the petitioner to further cross examine PW1 by filing an appropriate petition before the Court.

6. If the petitioner feels that PW1 has to be cross examined further, he may file an application before the Court below and the Court below shall consider the same in accordance with the law.

7. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings within a period of three months from the date of receipt of the copy of this order. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ub

To
1. The Fast Track Court No. II,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Vinothkumar, Advocate SR.No.84330

Cr1.O.P.27522 of 2018

MG(CO)

GMV (20/12/2018)