

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.23024 of 2018
and Crl.M.P.No.12854 of 2018

C.Ravichandran

...Petitioner

-Vs-

Mohammed Yusuff

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the order dated 07.09.2018 made in C.M.P.No.52 of 2018 in Crl.Appeal No.96 of 2017 on the file of Additional Sessions Court (FTC Mahila Court), Erode and to set aside the same.

For Petitioners : Mr.C.Saravanan
For Respondent : Mr.Kaithamalai Kumaran

O R D E R

This petition has been filed seeking to set aside the order dated 07.09.2018 made in C.M.P.No.52 of 2018 in Crl.Appeal No.96 of 2017 on the file of Additional Sessions Court (FTC Mahila Court), Erode, thereby rejecting the application filed under Section 293 Cr.P.C., to adduce evidence.

2.It is seen that the respondent filed a private complaint as against the petitioner under Section 138 N.I. Act in S.T.C.No.311 of 2015, before the learned Judicial Magistrate No.II (Fast Track Court), Erode. In that case, the petitioner was convicted for the offence punishable under Section 138 N.I.Act. As against the conviction, the petitioner preferred an appeal in Crl.A.No.96 of 2017, before the Additional Sessions Court, Erode. Pending appeal, the petitioner filed CMP.Nos.149 and 150 of 2017 in Crl.A.No.96 of 2017, for comparison of signature by the handwriting expert to verify the signature found in the alleged cheque. In the said petition, the respondent also filed counter and the first Appellate Court allowed the petition and sent the alleged cheque alongwith the documents containing admitted signature of the petitioner for handwriting expert opinion. The handwriting expert opined that the signature found in the cheque differs with the admitted signature of the petitioner. In this regard, the petitioner wanted to examine the handwriting expert to explain the said opinion. Hence, he filed a petition under Section 293 Cr.P.C.,

in CMP.No.52 of 2018. The appellate Court dismissed the same for the reason that the cheque was sent for handwriting expert opinion by the trial Court itself and only after consideration of the said Court, the trial Court convicted the petitioner and as such the handwriting expert cannot be examined at the appellate court at this stage.

3.On perusal of the records, this Court finds that the first appellate Court has wrongly come to a conclusion that the alleged cheque was sent for handwriting expert opinion by the trial Court and after receiving the opinion, the handwriting expert was not examined by the petitioner. But, it is seen the CMP.Nos.149 and 150 of 2017 in Crl.A.No.96 of 2017 before the appellate Court and that the appellate Court has allowed the petitions and sent the alleged cheque as well as admitted signature of the petitioner for comparison by the handwriting expert opinion. As stated above, the handwriting expert opined that the alleged signature by the petitioner and the admitted signature of the petitioner differs. This Court is of the view that, once the report received from the expert opinion, it has to be brought into record of the Court or otherwise sending the alleged cheque to handwriting expert would serve no purpose.

4.In view of the above discussions, the order dated 07.09.2018 passed by the learned Additional Sessions Court (FTC Mahila Court), Erode in C.M.P.No.52 of 2018 in Crl.A.No.96 of 2017 is set aside. This Criminal Original Petition is allowed and the petitioner is permitted to examine the handwriting expert to mark the opinion of the handwriting expert as expeditiously as possible. Thereafter, the appellate Court is directed to dispose of the case in Crl.A.No.96 of 2017 within a period of four months from the date of receipt of copy of this order. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II (Fast Track Court), Erode.

2.The Additional Sessions Judge (Fast Track Mahila Court), Erode.

+lcc to Mr.Kaithamalai Kumaran, Advocate sr.no.28715

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nr 10/05/2019



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