



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.29405 of 2019 and
Crl.R.C.Nos.1070 & 1120 of 2019
and
Crl.M.P.Nos.14582 & 15146 of 2019

Premalatha ...Petitioners in both Crl.R.C & Crl.O.P.

Vs.

Mery Rezina ...Respondent in both Crl.R.C & Crl.O.P.

PRAYER in Crl.R.C.No.1070 of 2019 : Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C to set aside the Order of the II Additional District and Sessions Judge, Erode dated 19.07.2019 passed in Crl.M.P.No.137 of 2018 in C.A.No.116 of 2018.

PRAYER in Crl.R.C.No.1120 of 2019 : Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C to set aside the order of the II Additional District and Sessions Judge, Erode dated 19.07.2019 passed in Crl.M.P.No.21 of 2019 in C.A.No.116 of 2018.

PRAYER in Crl.O.P.No.29405 of 2019 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to order dated 19.07.2019 made in Crl.M.P.No.22 of 2019 in C.A.No.116 of 2018 on the file of the II Additional District and Sessions Judge, Erode and set aside the same.

For Petitioner in all petitions : Mr.T.Gowthaman

For Respondent in all petitions : Mr.M.Guruprasad



COMMON ORDER

These petitions have been filed to call for the records relating to order dated 19.07.2019 made in Crl.M.P.Nos.137/2018 and 21 & 22 of 2019 in C.A.No.116 of 2018 on the file of the II Additional District and Sessions Judge, Erode and set aside the same.

2. The case of the petitioner is that the petitioner was implicated as accused for the offence under Section 138 read with 141 of the Negotiable Instrument Act, before the learned Fast Track Magistrate Court No.II, Erode, in S.T.C.No.468 of 2012 at the instigation of the respondent herein. After the process of trial, the petitioner was convicted for the said offence. Aggrieved by the same, the petitioner has filed C.A.No.116 of 2018, before the Lower Appellate Court, wherein, the petitioner has filed three petitions in Crl.M.P.Nos.137 of 2018, 21 and 22 of 2019 in C.A.No.116 of 2018 for comparison of the signature in question before the experts and the said petitions were dismissed by the Lower Appellate Court. Since the request for comparison of signature, was rejected by the Lower Appellate Court, the petitioner is before this Court by filing these petitions.

3. The learned counsel appearing for the petitioner submitted that though three petitions were filed before the Lower Appellate Court in C.A.No.116 of 2018, for sending the instrument for comparison of signature before the experts, all the three petitions were dismissed, without any sufficient reasons. Further unless the signatures are compared, the petitioner will be put to great prejudice, on the other hand, it will not cause any prejudice to the respondent complainant. Even there is no bar for sending the instruments to the expert for comparison of the signature, in the appeal stage. Further, the petitioner is ready to bear the expenses incurred for comparison of the signatures.

4. The learned counsel appearing for the respondent submitted that the instruments in question were issued in the year 2012 and the complaint was also filed in the year 2012 itself, however, the case was disposed of belatedly only on 26.03.2018. When the Criminal Appeal is filed against the order of conviction, filing the present petitions before this Court, is not sustainable. However, without prejudice to the rights of the respondent, this Court may issue direction to the Lower Appellate Court to send the instrument for comparison of signature before the expert by imposing appropriate cost on the petitioner.



5. The learned counsel appearing for the petitioner also accepts to bear the expenses which could be incurred for sending the instruments in question for comparison before the Expert.

6. This Court has considered the arguments advanced by the learned counsel appearing on both sides and perused the materials available on record.

7. In view of the consent expressed by the learned counsel appearing for the parties, this Court is inclined to issue direction to the Lower Appellate Court to send the instruments for experts' opinion.

8. Accordingly, these Criminal Original Petition and Criminal Revision Petitions are disposed of and the order dated 19.08.2019 made in CrI.M.P.No.137/2018, CrI.M.P.Nos.21 and 22/2019, are set aside, by directing the Lower Appellate Court to send the instruments in question for comparison before the expert, immediately on receipt of a copy of this order and the expert shall give his opinion on the same instruments within a period of four weeks from the date of receipt of the same from the Lower Appellate Court. The cost for such comparison is fixed at Rs.10,000/- (Rupees Ten Thousand only) which shall be borne by the petitioner and deposited before the Court to the credit of the appeal. After receipt of the experts' opinion, the Lower Appellate Court, shall independently decide the matter in accordance with law. Consequently connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

sk
To

1. The II Additional District and Sessions Judge,
Erode.

+2 CCs to Mr.M.Guruprasad, Advocate, Sr.No. 42390,42391.
+2 Ccs to Mr.T.Gowthaman, Advocate, Sr.No. 42430,42780.
+1 CC to Mr.T.Gowthaman, Advocate, Sr.No. 42779.(01/10/2021)

CrI.R.C.Nos.1070 & 1120 of 2019
and
CrI.O.P.No.29405 of 2019

GMR(CO)
LS(01/10/2021)