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Crl.O.P.No.3618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.3618 of 2021

and

Crl.M.P.No.2134 of 2021

Nirmala

...Petitioner

-Vs-

1.V.Saradha

2.State rep. by its Public Prosecutor,
Coimbatore

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 08.01.2021 made in Crl.M.P.No.91 of 2020 in C.A.No.393 of 2019 on the file of the I Additional District and Sessions Court, Coimbatore.

For Petitioner : Mr.N.Manokaran

For R1 : No appearance

For R2 : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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The petitioner challenges the orders passed in Crl.M.P.No.91 of 2020 in C.A.No.393 of 2019 by the I Additional Sessions Court, Coimbatore, refusing to allow the petitioner's application under Section 391 of Cr.P.C.

2.The petitioner faced trial in C.C.No.608 of 2017 on the file of the Judicial Magistrate Court – II, Coimbatore and convicted for the offence under Section 138 of Negotiable Instruments Act, sentenced to undergo imprisonment for a period of six months and was directed to pay a sum of Rs.3,00,000/- as compensation to the 1st respondent herein by the judgment dated 30.10.2019. The petitioner had preferred an appeal and had filed the petition under Section 391 Cr.P.C on 24.08.2020.

3.It is the case of the petitioner that she could not depose before the trial Court as she was unable to travel from Trichy to Coimbatore due to floods. However, the learned Judicial Magistrate had closed the evidence on the side of the defence and passed the judgment against her. She had further stated in the petition that, since there is a presumption,



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the burden is on her to rebut the said presumption under the Negotiable Instruments Act.

4.The 1st respondent had filed the counter stating that the petitioner had marked Exs.D1 to D5; that the application filed by the petitioner under Section 315 of Cr.P.C., was allowed by the Trial Court; but the petitioner had not availed of the said opportunity for more than three occasions.

5.The learned I Additional Sessions Judge, dismissed the petitioner's application under Section 391 Cr.P.C. The learned I Additional Sessions Judge, had observed that the petition filed by the petitioner was bereft of particulars and no reason was given by her justifying the application under Section 391 Cr.P.C.

6.This Court finds that sufficient opportunity was given to the petitioner during the trial to examine herself. The trial Court had granted three adjournments for her examination and hence the petitioner's case that she was not given sufficient opportunity cannot be accepted. Further



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this Court also finds that the order passed by the learned Judicial Magistrate No.II, Coimbatore, rejecting the petition filed by the petitioner does not suffer any infirmity, since the petitioner has not been able to show that as to what is the nature of additional evidence that she proposes to adduce. This court also finds that she had marked Exs.D1 to D5 before the trial Court while cross-examining the complainant / 1st respondent herein.

6.For all the above reasons, this Court is not inclined to interfere with the order passed by the learned I Additional District and Sessions Judge, Coimbatore in Crl.M.P.No.91 of 2020 in C.A.No.393 of 2019 dated 08.01.2021. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

27.03.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order



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To,
The office of the Public Prosecutor,
Coimbatore.



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SUNDER MOHAN,J.

smv

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