



Crl.O.P.Nos.7685, 7686, 7688, 7689, 7691, 7694, 7696 & 7697 of 2023

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in

Crl.A.SR.Nos.14390, 14384, 14388, 14397, 14381, 14401, 14412 & 14377 of 2023

M. NIRMAL KUMAR, J.

These petitions have been filed seeking to grant special leave to the petitioners to prefer the above criminal appeals.

2.The petitioners/complainant have filed a private complaint under Section 138 of the Negotiable Instruments Act in C.C.Nos.1274 and 2697 of 2013, 426 and 4331 of 2012, 427 and 2693 of 2013, 4332 and 4333 of 2012. All the complaints were filed through Power of Attorney one Om Prakash Sandu.

3.The primary contention of the petitioners is that the said Om Prakash Sandu has passed away on 08.03.2014. In this case, the accused had got into the box as DW1 and marked Exs.D4 and D5. These documents have been marked on 08.03.2018 after four years after the death of the Power of Attorney Om Prakash Sandu. The petitioner objecting to the same and also questioning the veracity of the signature found in Exs.D4 and D5, filed a petition under Section 45 of the Indian Evidence Act in Crl.M.P.No.2822 of 2018 in



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C.C.No.2693 of 2013, since the original of Exs.D4 and D5 were filed in this case for forwarding the documents to hand writing expert. Further submitted that the alleged compromise said to have been taken place on 12.12.2013 and thereafter, the Power of Attorney appeared before the Court on 04.01.2014 and 26.02.2014 and these documents were not produced or put forth to the Power of Attorney.

4.The only ground on which the Lower Court dismissed the contention of the petitioner is that the order in Crl.M.P.No.2822 of 2018 was passed on 08.03.2019 with a direction to forward Exs.D4 and D5 to the hand writing expert to analyse the signature and no action has been taken after four years. Thereafter, on 08.02.2023, the petitioner filed a process memo. The petitioner also filed a petition under Section 311 of Cr.P.C. in Crl.M.P.No.1641 of 2018 and the same was allowed on 05.04.2018 for cross examination of DW1. But DW1 was not cross examined by the petitioner for the past five years. Finding that it is only a dilatory tactics, dismissed the petitions on 21.02.2023 and Crl.M.P.No.2822 of 2018 was not considered.

5.The learned counsel for petitioner submitted that the petitioner aggrieved against the order of the Lower Court had approached this Court in



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CrI.O.P.No.3818 of 2023 and this Court by order dated 20.02.2023, finding

that the reason given by the petitioner to be acceptable and also considering Covid-19 situation, allowed the petition directing the Lower Court to pass appropriate orders on the memo dated 03.02.2023 in tune with the order passed in CrI.M.P.No.2822 of 2018 within a period of two weeks, i.e., to forward Exs.D4 and D5 to forensic examination. This order has been submitted to the Lower Court along with a memo on 20.02.2023. In proof of the same, a copy of memo, Court seal and signature of the Magistrate confirming that the memo and order copy had been received on 20.02.2023 were filed. In all fairness, the Lower Court after the directions of this Court ought to have sent the document for forensic examination and further should have seen that DW1 could not be cross examined since this report would be a vital fact to put across to the witness. Strangely the Lower Court by judgment dated 21.02.2023, dismissed all the complaints and acquitted the accused, which is not proper.

6.Learned counsel further submitted that in view of the above, all the cases have to be remanded back to the Lower Court by setting aside the judgment and to forward Exs.D4 and D5 to the hand writing expert and after getting opinion permit the petitioner to cross examine DW1. To arrive at gestation of the cases, these exercise is necessary.



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7.Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

20.12.2023

Note: Registry is directed to number the Criminal Appeals, if they are otherwise in order.
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