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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17878 of 2022
and Crl.MP.No.11493 of 2022

Mrs.Manimekalai

... Petitioner/Complainant

-Vs-

Sudharsan

..Respondent/Accused

Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 01.07.2022 passed in Crl.MP.No.1166/2021 in STC No.5377 of 2016, by the learned Judicial Magistrate II at Tambaram set aside the same by allowing the criminal original petition.

For Petitioner : Mr.S.Ruban Prabhu

For Respondent : Mr.A.Arasu Ganesan
Mr.M.S.Akas Daniel

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.MP.No.1166 of 2021 in STC No.5377 of 2016, dated 01.07.2022, wherein the Court below has allowed the application filed u/s 311 of Cr.PC.,

<https://www.mhc.tn.gov.in/judis> to cross examine the complainant in order to get the specimen signature to



be sent for expert opinion.

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2.The respondent is facing trial before the Court below based on the private complaint given by the petitioner for offence u/s 138 of the Negotiable Instruments Act, 1881. The respondent while cross examining the petitioner had disputed the signature found in Ex.P.1 which is a debt deed. Hence, the respondent wanted this document to be sent for expert opinion. The same was allowed by the Court below and aggrieved by the same, the present criminal original petition has been filed before this Court by the petitioner/complainant.

3.Heard Mr.S.Ruban Prabhu, learned counsel for the petitioner and Mr.A.Arasu Ganesan, learned counsel for the respondent.

4.This Court has carefully considered the submissions made on either side and the materials available on record.

5.It is seen from records that the complaint was filed in the year 2016. The petitioner examined herself as PW-1 and she was cross examined on the side of the respondent in the year 2019. During the year 2021, an application came to be filed by the respondent u/s 311 of Cr.PC., to cross examine the petitioner in order to get the specimen signature from the petitioner.

According to the respondent, Ex.P.1 does not contain his signature. The



respondent has not disputed the signature that was found in the cheque and the only dispute seems to be the signature that was found in the debt deed.

6.In the considered view of this Court, the Court below failed to see that the case has been pending from the year 2016 and the respondent has chosen to file the application u/s 311 of Cr.PC., in the year 2021. Even if Ex.P.1 document is denied by the respondent and the respondent is not accepting the signature found therein, it is for the respondent to project such a defense before the Court below. The application that was filed before the Court below u/s 311 of Cr.PC., for this purpose is not sustainable. Whatever defense is available for the respondent to rebut the legal presumption u/s 139 of the Negotiable Instruments Act, 1881 can be raised before the Court below. For that purpose, there is no need for sending Ex.P.1 for expert opinion.

7.In the light of the above discussion, the order passed by the Court below in CrI.MP.No.1166 of 2021 in STC No.5377 of 2016, dated 01.07.2022, is hereby set aside and this criminal original petition is accordingly allowed. It is brought to the notice of this Court that the case is now transferred to the file of the Judicial Magistrate, Pallavaram and has been renumbered as STC No.382/2023. Hence, there shall be a direction to the Judicial Magistrate, Pallavaram, to dispose of STC No.382/2023, within a period of two months



N.ANAND VENKATESH, J.

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from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

18.07.2023

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Index : Yes/No

Internet : Yes/No

To

1.Judicial Magistrate II at Tambaram.

2.Judicial Magistrate, Pallavaram.

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