

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.R.C.No.1128 of 2015
and M.P.No.1 of 2015

K.Venkatachalapathy

... Petitioner

Vs.

C.Surendramoorthy

... Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., against the order dated 19.10.2015 passed in C.M.P.6100 of 2015 in S.T.C.No.366 of 2014 by the Judicial Magistrate-II, Krishnagiri.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.N.Elayaraja

For Respondent : Mr.A.E.Lakshmi Narayanan

ORDER

This Revision challenges the order dated 19.10.2015 passed in C.M.P.No.6100 of 2015 in S.T.C.No.366 of 2015 on the file of Judicial Magistrate No.II, Krishnagiri.

2. The petitioner is facing prosecution under Section 138 of the Negotiable Instruments Act in such case.

3. It is the petitioner's contention that he had effected borrowals in a sum of Rs.12,00,000/- from one Veeramani and by way of security had executed a Power of Attorney as also issued three cheques in Blank, the said Veeramani has misused the Power of Attorney and effected sale of property of the petitioner in favour of his brother-in-law, who upon summons taken out by the petitioner has been examined as D.W.3 in the case. The petitioner has moved independent civil suit, which came to be dismissed where against the petitioner has moved appeal and the same is pending in A.S.No.303 of 2015 before this Court. The petitioner had also preferred a complaint informing criminality.

4. The petitioner contends that he was introduced to the said Veeramani through one Eswaran, whom he had examined as

D.W.4; while D.W.4 had admitted to his having introduced the petitioner to the said Veeramani and his brother-in-law Kathiravan viz., D.Ws.2 and 3, they had denied knowledge of each other or of the transactions with the complainant.

5. Initially CrI.M.P.No.4908 of 2015 was filed seeking examination of officials of mobile companies, against dismissal thereof, the petitioner had earlier moved this court by way of CrI.R.C.No.1015 of 2015 seeking a direction for examining all the respective Phone Service Providers and for production of the documents item wise relating to the complainant, D.Ws.1, 2 and 3.

6. This court had informed that the decision in the case of State (N.C.T., of Delhi) and Others Versus Navjot Sandhu @ Afsan Guru and Another reported in CDJ 2005 SC 574, permitting bringing in as evidence electronic records without strict compliance of the rules of evidence relating thereto, had been overruled in P.V.Anvar Versus P.K.Basheer and Others reported in CDJ 2014 SC 790, wherein, the Apex Court, in paragraph 22, has held thus:-

"The evidence relating to electronic record, as noted herein before, being a special provision, that general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Section 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

7. It is in such circumstances that the petitioner withdrew the earlier revision and moved the trial court by way of CrI.M.P.No.6100 of 2015, which came to be dismissed and against which, the present Criminal Revision case came to be filed.

8. Learned counsel appearing for the petitioner informing circumstances aforementioned submitted that it was necessary that all details and particulars as required in Crl.M.P.No.6100 of 2015 be made available towards proving his defence of the cheque which was placed in the hands of D.W.2 having been misused through P.W.1.

9. Learned counsel for respondent raised strong objections submitting that the petitioner, merely towards protracting proceedings, had examined 3 defence witnesses and the case filed in S.T.C.No.366 of 2014 need not be kept unnecessarily pending. It is his further submission that at best, the petitioner can seek only call records pertaining to complainant-P.W.1.

10. We have considered the rival submissions. In the facts and circumstances of the case, this court is of the view that interests of justice would be secured by allowing this Revision. Doing so would afford the petitioner a fair opportunity of proving his defence. It is only on obtaining the records sought under Crl.M.P.No.6100 of 2015, the petitioner will be able to establish the relationship/connection between the petitioner, P.W.1, respondent/complainant and D.Ws.2 and 3. Such order becomes all the more necessary when D.W.4 has specifically admitted to having introduced the petitioner to D.W.2.

11. For the aforesaid reasons, this Criminal Revision Petition is allowed. The Court below shall call for production of the records sought in Crl.M.P.6100 of 2015 duly certified under Section 65B of the Evidence Act. The Court below shall dispose off the case within one month of receipt thereof, and in any event not later than 15.03.2016.

12. The observations made herein are only for the disposal of the present revision and have absolutely no bearing on the merits of the case of rival parties. Consequently, connected MP is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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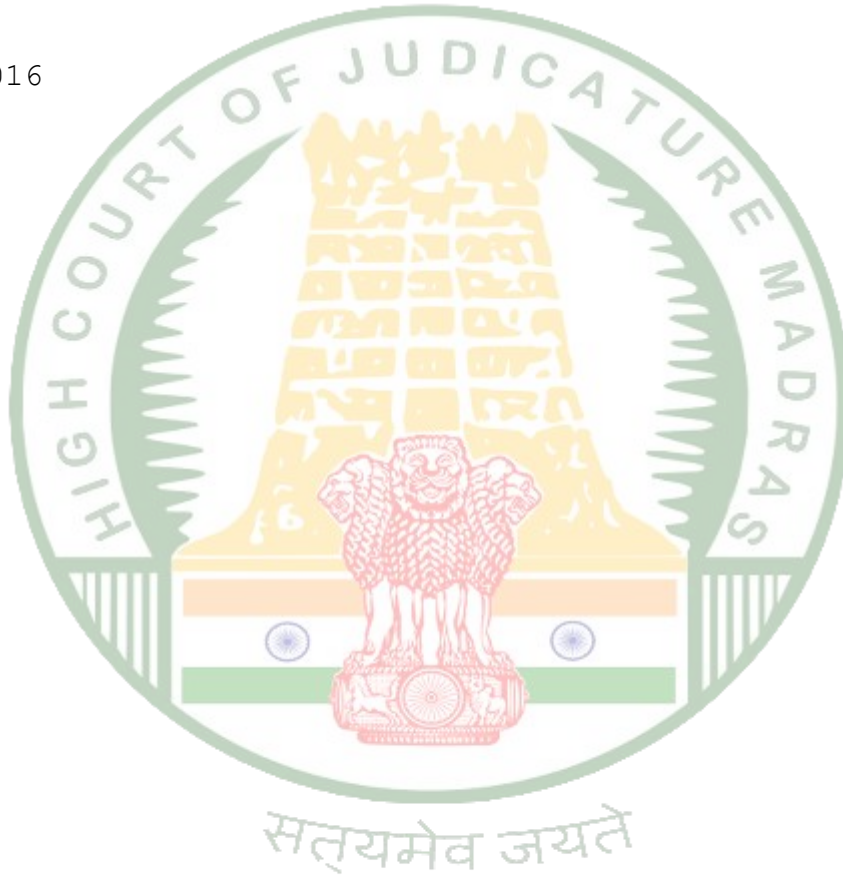
The Judicial Magistrate-II, Krishnagiri.

+1 cc to Mr.A.E.Lakshmi Narayanan Advocate sr.66466

+1 cc to Mr.N.Elayaraja Advocate sr.66452

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