

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2015

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.142 of 2010

and

M.P.No.1 of 2013

C.Rajamanickam

.. Petitioner

vs

Inspector of Police
C.B.C.I.D., Salem

.. Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 13.10.2009 passed in Crl.M.P.No.2509 of 2008 in C.C.No.185 of 2003 on the file of the Judicial Magistrate No.III, Salem.

For Petitioner : Mr.K.Selvaraj

For respondent : Mr.V.Arul
Government Advocate

ORDER

This revision petition has been filed challenging the dismissal of the discharge petition filed by the petitioner under Section 239 of Cr.P.C., in C.M.P.No.2509 of 2008 in C.C.No.185

of 2003 on the file of the learned Judicial Magistrate No.III, Salem.

2 (a). The case of the prosecution is that one P.Manickam, who has been cited as the second witness in the charge sheet, is the plaintiff in O.S.No.795 of 1979 on the file of the Principal Sub Judge, Salem in which the second accused Karuppannan was the defendant. The suit was filed by the said Manickam, namely, the plaintiff, stating that the second accused issued *pronote* dated 18.01.1973 for a sum of Rs.7,000/- in favour of him and the same was marked as Ex.A1. The suit was subsequently dismissed by the Principal Sub Judge, Salem. However, the document was said to have been in the custody of the Court. The plaintiff preferred an appeal before the District Court, Salem in A.S.No.219 of 1983 and the same was ended in favour of the plaintiff. Second appeal was preferred by the second accused herein in S.A.No.1760 of 1984 and the same was remanded back to the District Court, Salem for comparison of Ex.A1, the suit promissory note with an handwriting expert and to decide the case on merits.

(b). In the meanwhile, Ex.A1, Suit promissory note was taken away from the bundle and in the said place of Ex.A1 a

forged promissory note was replaced. Thereafter, enquiry was conducted with regard to the said replacement of Ex.A1, promissory note. Petitioner was also enquired along with other witnesses. Thereafter, based on the complaint given by the District Judge, Salem, a case was registered against the petitioner and the second accused for the offence under Section 466, 471 and 120 (B) of IPC. The allegation against the petitioner is that Ex.A1 suit Promissory Note contains only the signature of the successor Thiru. V.S.Arulraj, Sub Judge, Salem and the petitioner has expressed doubts that Ex.A1 might have subsequently given to him stating that the initial of the Judge was omitted to be obtained then and there. But all the other exhibits contains the signature of Thiru. Rathnam, Sub Judge, Salem. Hence, it was suspected that the suit promissory note must have been replaced after the disposal of the First Appeal. Therefore, the respondent has laid the charge sheet against the petitioner for the offence under Section 466, 467 and 471 IPC whereas against the other accused (A2) under Section 466 read with 109 IPC , 407 read with 109 IPC and 471 Read with 109 IPC and the same has been taken on file in C.C.No.185 of 2003. Pending trial, the petitioner herein has filed petition under Section 239 of Cr.P.C., and the same was dismissed. Therefore, the petitioner

has come forward with this revision.

3. According to the revision petitioner, after the disposal of the suit in O.S.No.795 of 1979, the bundle was never in his possession and he has no necessity to replace any forged promissory note for any kind of reason as alleged by prosecution. Hence, the allegation that the petitioner has replaced the alleged promissory note is baseless.

4. The learned counsel for the revision petitioner submitted that the Court below has dismissed the discharge petition only on the ground that earlier application filed by the petitioner for discharge has already been rejected and now there was no change in circumstances. The learned counsel for the petitioner further submitted that the Court below failed to take into consideration the fact after the evidence of P.W.1, the second petition has been filed and therefore, there was change in circumstances. Further, it is submitted that there is no specific allegation that the petitioner was the only person, who deal with the records and replaced the pronote during the pendency of the appeal. It is also submitted that there is no specific statement made in 161 statement or any other material to show that he was

the only person handling the records. According to the learned counsel, after the disposal of the suit, entire bundle was in the custody of the Central record and hence, the petitioner is in no way responsible for the alleged offence.

5. The learned Government Advocate submitted that the Court below has appreciated the entire fact and came to the conclusion that previous petition has been filed only on the same ground and rightly dismissed the present petition, as there is no change in circumstances. The learned Government Advocate further submitted that since the examination of witnesses have also been commenced, at this stage, the petition is not maintainable. Therefore, he would pray for dismissal of the Criminal Revision Case.

6. Heard the learned counsel for the petitioner and the learned Government Advocate and perused the records.

7. On a perusal of the entire records, it is clear that the petitioner herein is a court staff and the allegations made against him is that he has replaced the original Suit promissory note Ex.A1 with a forged one during the pendency of the appeal. The

only ground raised by the petitioner is that he was not the only person, who was in charge of handling the document. According to the petitioner, the bundle was in the Central Record where other staffs also worked as Junior Assistant. According to him, since several persons handled the records during the relevant period, it is not possible to fix the responsibility for replacement on any individual.

8. The contention of the petitioner that somebody also handled the bundle cannot be a reason to discharge him, when there is a specific allegation as against him. Further, the above aspect has to be decided only after due trial and as rightly pointed by the lower Court, the same cannot be decided in the discharge petition, at this stage. Hence, rightly the Lower Court dismissed the discharge petition. I do not find any reason to interfere with the reasoned order of the Court below. It is always open to the petitioner to raise the above aspects as defence before the trial Court at the time of trial.

9. The Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

22.06.2015

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Index: Yes/No

Internet:Yes

To

1. Judicial Magistrate No.III, Salem

2. The Public Prosecutor, Madras

B. RAJENDRAN,J

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22.6.2015