



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WEB COPY

Criminal Revision Case (MD)No.107 of 2014
and
M.P(MD)No.1 of 2014

S.Dhanasekaran

...Petitioner/Accused

Vs.

P.D.Meenakshi Sundaram

...Respondent/Complainant

Prayer : Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate, Sivakasi, in Cr.M.P.No.12479 of 2013 in S.T.C.No.4170 of 2008, dated 20.11.2013.

For Petitioner

: Mr.P.T.Ramesh Raja

For Respondent

: No appearance

* * * * *

ORDER

This Criminal Revision Case is filed seeking to set aside the order passed by the learned Judicial Magistrate, Sivakasi, in Cr.M.P.No.12479 of 2013 in S.T.C.No.4170 of 2008, dated 20.11.2013.

2. The respondent who is the complainant in S.T.C.No.4170 of 2008, filed under Section 138 of the Negotiable Instruments Act, has filed Cr.M.P.No.12479 of 2013 for reconstruction of the records as the case bundle has been lost/misplaced and not available right from 22.12.2010. The said petition was strongly opposed by the revision petitioner/accused contending that while cross-examining P.W.1/complainant, two documents were marked and those documents were crucial to probabalise the case of the revision petitioner/accused and in the event of reconstruction of the case bundle and further trial takes place, the defence projected by the revision petitioner/accused, would be prejudiced to a great extent and therefore, prayed for the dismissal of the said petition.

3. The trial Court placed reliance upon the decisions in *M.Chinnappan and 3 others v. P.Shanmugam and 3 others* reported in 2009 (4) L.W. 147, which in turn, placed reliance on the decisions in (i) *Marakkarutti v. T.P.M.Veeran Kutty* reported in AIR 1923 Mad. 247 = (1923) 18 L.W. 21 (F.B); (ii) *Katam Achutharamayya v. Rikki Nagabhushanan* reported in I.L.R. 1957 A.P. 739; (iii) *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* reported in AIR 1962 S.C. 527; and (iv) *Dr.K.Srinivasan v. P.Srinivasan* reported in 1989-1-L.W.195, and also took note of the fact that the disciplinary action has also been taken against the concerned Assistant, who lost the case bundle and consequently, ordered for the reconstruction of the case bundle.

4. Challenging the same, the revision petitioner/accused has filed this Criminal Revision Case.

5. The learned Counsel for the revision petitioner/accused would vehemently contend that while P.W.1 was in the box, two documents came to be marked to substantiate the defence projected by the revision petitioner/accused and in the event of reconstruction of the case bundle,

his entire defence would be prejudiced.

6. It is further submission of the learned Counsel for the revision petitioner that though the act of the Court cannot prejudice anybody while ordering reconstruction, the defence taken by the revision petitioner/accused would also get diluted and therefore, prayed for setting aside the impugned order and for allowing the revision.

7. Though notice was served on the respondent and his name appeared in the cause list, there is no representation either in person or through Counsel.

8. It is to be noted that the trial Court has placed reliance on the decisions in *M.Chinnappan and 3 others v. P.Shanmugam and 3 others* reported in 2009 (4) L.W. 147 and *Dr.K.Srinivasan v. P.Srinivasan* reported in 1989-1-L.W.195 which laid down the proposition that every Court has inherent power to reconstruct its own records where it has been destroyed or lost and also considered the proceedings issued by this Court in R.O.C.No.457/07/F/MB, dated 21.03.2007.

9. It is well settled position of law that if a case bundle has been lost on account of the alleged negligence of a Court staff who is also facing departmental proceedings, the act of the Court in ordering for reconstruction of the same, cannot prejudice anybody and the trial Court, on a petition filed by the respondent/complainant has, rightly ordered for reconstruction of the same and hence, the reasons assigned by the lower Court for ordering reconstruction of the case bundle, are in order and sustainable.

10. Therefore, this Criminal Revision Case is dismissed. However, it is open to the revision petitioner/accused to take all steps to substantiate his defence, *de hors* the dismissal of this revision. Consequently, the connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate, Sivakasi.

2.The Chief Judicial Magistrate, Virudhunagar at Srivilliputhur.

Criminal Revision Case (MD)No.107 of 2014

and

M.P(MD)No.1 of 2014

09.01.2015

rsb

pbk 14/02/2015 ::2p-3c: