

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2018

Pronounced on : 05.06.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.184 of 2018
and
Crl.M.P.No.1644 of 2018

B.Damodaran ... Petitioner
Vs.

1.State represented by,
The Inspector of Police,
CCB, Team-IV, Egmore, Chennai.

2.V.Durga Vijayakumar ... Respondents

Prayer: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C., to call for the records in Crl.M.P.No.1207 of 2014 in C.C.No.1180 of 2007, on the file of the Metropolitan Magistrate, for Exclusive Trial of CCB Cases and CBCID Metro Cases, Allikulam), Chennai and set aside the order dated 22.01.2018.

For Petitioner : Mr.N.R.Elango, (Senior Counsel)
for Mr.R.Vivekananthan

For Respondents : Mr.R.Suriyaprakash (for R1)
Government Advocate (Crl.Side)

Mr.S.Anantha Narayanan (for R2)
for M/s.S.N.Nandi Devan

ORDER

The first accused in the above final report in C.C.No 1180 of 2007 facing charge under Sections 406, 468, 471 read with 34 IPC on the file of the learned Metropolitan Magistrate, For Exclusive Trial of CCB Cases and CBCID Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai is before this Court challenging the impugned order of allowing the 2nd respondent's application in Crl.M.P.No.1207 of 2014 under Section 45 of Indian Evidence Act sought for expert opinion on a General Power of Attorney dated 30.09.2005.

2.It is the case of the 2nd respondent/defacto complainant that the petitioner herein along with the other accused A2 and A3 forged the signature of the defacto complainant and made ready a fake General Power of Attorney dated 30.09.2005 and through the said document alienated the properties of the 2nd respondent. Hence a complaint came to be lodged and on investigation the 1st respondent police found the accused committed the offences of forgery and cheating, thereby laid the above final report in C.C.No.1180 of 2007 on the file of the learned Metropolitan Magistrate, For Exclusive Trial of CCB Cases and CBCID Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai for the offences under Sections 406, 468, 471 read with 34 IPC and the same was taken on file.

3.In the said circumstance the 2nd respondent herein filed an application under Section 45 of Indian Evidence Act seeking for expert opinion on the General Power of Attorney dated 30.09.2005. The substance of the application was that it is indispensable and imperative to send the General Power of Attorney dated 30.09.2005 before the Forensic Lab at Hyderabad or Delhi for comparison with that of the admitted signatures of the petitioner contained in copy of sale deed dated 21.09.2005, as the same would enable the Court to come to right conclusion. The 2nd respondent also undertook to bare the charges and cost thereto in sending the above document.

4.The said application was resisted by the petitioner herein contending that the application is intended to prolong the proceedings and there is no need of expert opinion since the genuinity of document is liable to be established through evidence. It was his further contention that the Court itself when is empowered to compare the signatures, it is not necessary to send for the Document for expert opinion under Section 45 of Indian Evidence Act. However, the Learned Judge on misconception of law and fact erred by allowing the 2nd respondent's application by ordering to send for document for expert opinion before the Forensic Lab at Chennai, vide an order dated 22.01.2018. The said order is impugned herein.

5.I heard Mr.N.R.Elango, learned Senior Counsel for Mr.R.Vivekananthan, learned counsel for the Revision petitioner, Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.S.Anantha Narayanan, for M/s.S.N.Nandi Devan, learned counsel for the 2nd respondent and perused the entire records.

6.The Learned Counsel for the revision petitioner would submit that application under Section 45 of Indian Evidence Act

was intended to prolong the proceedings. The Trial Court when by itself is empowered to compare the signatures, it is unnecessary to send for the Document for expert opinion. The genuineness of document is liable to be established through evidence and more so the expert opinion cannot be made on the Photo copy of the GENERAL POWER OF ATTORNEY dated 30.09.2005. The subject document since not being a part of the investigation it can be permitted in trial only under Section 173(8) of Cr.P.C, whereas the 1st respondent has failed to comply with the said provision. Yet the learned Judge erred in allowing the 2nd respondent's application and the same is liable to be set aside.

7.Per Contra, the learned counsel for the respondents submitted that sending the General Power of Attorney dated 30.09.2005 for comparison with that of the admitted signatures of the 2nd respondent herein contained in copy of sale deed dated 21.09.2005 in no way would prejudice the revision petitioner and in actual the comparison of signatures would enable the Court to come to right conclusion. In this regard the learned counsel for the 2nd respondent relied on the following Judgments in support of his case:

1. 2002 (2) M.L.J. 365 in the case of Gopal and another - Vs- Ambiga and others.

2. 2009 (14) SCC 677 in the case of G.Someshwar Rao -Vs- Samineni Nageswar Rao and another,

3. In 2002 (1) M.L.J 151 in the case of Saroja and others - Vs- Poorna Maiyal and another, it is held that

"The opinion of the hand writing expert may not be a conclusive one, but at the same time, it will definitely guide the court to come to a reasonable conclusion for effective adjudication of the dispute. The sending of original documents is deprecated and under the circumstance, the handwriting expert can be permitted to take photographic copies of the documents in the presence of the officers of the Court and therefore, he can give the opinion. If that is not possible, then the Revision Petitioners themselves can arrange to take photographic copies of the documents containing the admitted signatures as well as the disputed signatures of the first respondent in the Court in the presence of Court officials and send those copies to the handwriting expert for the purpose of comparison and opinion".

8.On perusal of the impugned order and as well the entire records, it is seen that the subject document sought to be compared remain filed along with the final report by the 1st respondent as a Material document seized in the course of the investigation. Therefore, this Court finds no merit in the

argument of the learned counsel for the revision petitioner that can be permitted in trial only under Section 173(8) of Cr.P.C. Secondly this Court find that the ultimate interest of the criminal jurisprudence is to entail a fair Trial as to see whether the charge is guilty or otherwise.

9.At this juncture, it would be useful to refer that an opinion of the handwriting expert may not be conclusive, but may aid the Court to arrive at a fair decision. Therefore, this Court feels that no prejudice will be caused to the petitioner in sending the General Power of Attorney dated 30.09.2005 for comparison with that of the admitted signatures of the petitioner contained in copy of sale deed dated 21.09.2005. It is worthwhile to state that when it is the specific case of the 2nd respondent/ defacto complainant that the petitioner has forged the signatures of the defacto complainant and made ready the fake General Power of Attorney, certainly the comparison of the signatures in the disputed document with that of admitted document would play a vital role in enabling the Court to arrive at a right decision. It is also to be noticed that the Learned Magistrate taking into account of Time factor has ordered the Signatures to be compared before the Forensic Lab at Chennai. I do not find any error in the order impugned in this Criminal Revision Case and the same is liable to be confirmed by dismissing this Criminal Revision Case.

10.Therefore, this Court finds no merits in the instant Criminal Revision Petition and in the result, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vs

To

The Metropolitan Magistrate,
(for Exclusive Trial of CCB Cases and
CBCID Metro Cases, Allikulam),
Chennai.

WEB COPY

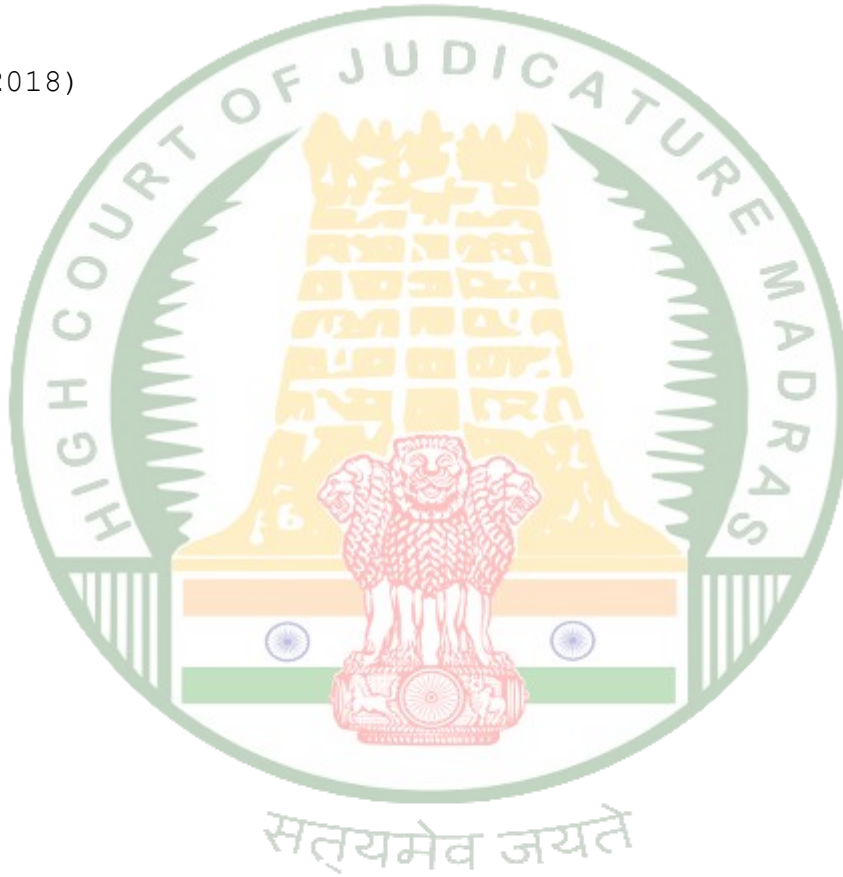
COPY TO

The Record Keeper, Criminal Section,
High Court, Madras.

+1cc to Mr.R.VIVEKANANTHAN, Advocate, S.R.No.34970

Pre-delivery order made in
Crl.R.C.No.184 of 2018
and
Crl.M.P.No.1644 of 2018

TR(07/06/2018)



WEB COPY