

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :23.04.2018
Orders Pronounced on:13.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.491 of 2018
and
Crl.M.P.No.5886 of 2018

B.S.Shah

...Petitioner

Vs.

M/s.J.V.H.Met-Cut Private Limited,
Rep by its Managing Director J.V.Harinath
No.9, Red Hills Industrial Area,
Maraimalai Nagar,
Malrojjapuram Post, Chengalpattu.

...Respondent

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order date 23.03.2018 in Crl.M.P.No.396 of 2018 in C.C.No.7140 of 2004 passed by the learned IX Metropolitan Magistrate Saidapet, Chennai.

For Petitioner : Mr.Prakash Goklaney,
for Mr.S.Giritharan

For Respondent : Mr.T.R.Ravi

O R D E R

The accused is the revision petitioner herein.

2. The petitioner/accused filed in Crl.M.P.No.396 of 2018 to mark certain documents namely certified copies of the balance sheet pertaining to the respondent's company (complaint before the trial Court was obtained from the Registrar of Companies). After contest, the said petition was dismissed and hence, this revision.

3. The learned counsel for the petitioner has submitted that the respondent herein is a complainant before the learned Judicial Magistrate No.II, Chengalpattu wherein a private complaint under Section 200 of Cr.P.C for alleged offence under Sections 465, 467, 468, 469 and 471 read with 420 of I.P.C. was filed and taken on file as C.C.No.7140 of 2004.

4. The sales performance of the accused, his Co-Brother and Brother were exceptionally poor and even for this very low sales, payments were not made. The complainant had to recall

huge stocks, as payment was not forthcoming. This resulted in huge financial losses for the complainants Industry, and the Company was on the verge of closure. While demanding the amount payable by him in December 2000, the accused introduced the complainant to one Mr.Gautham Chand a Moneylender who lent a sum of Rs.2,00,000/- through the accused who in turn paid the same to the complainant a sum of Rs.1,91,000/- by way of cheque drawn on Punjab Sind Bank, Cheque No.62539 dated 21.12.2000 after deducting Rs.9000/- towards interest. The accused asked the complainant for blank cheque as security since the accused stood as Guarantor for the above said loan amount. Because of the position of the complainants Industry, the complainant accepted money and also issued blank cheque to the accused belonging to S.B.I.Guindy, bearing cheque No.145368 as security. Except the signature nothing was filled up by the complainant. The cheque was issued at Maraimalai Nagar Industry Campus to the accused and also it was agreed that after the loan amount is paid, the accused would return the above said blank cheque.

5. Coming to know the termination of dealership the accused had fraudulently filled the above said S.B.I cheque No.145368 and also he had deposited the same in his bank, as if it was given to him for a settlement of account in connection with the Industry Business. The above said cheque was issued by the complainant to the accused at his Industry at Maraimalai Nagar and the same was deposited by the accused on 5.9.2002. By doing so the accused had intentionally committed the act of forgery, making a false document and the said act had been committed for the purpose of cheating and harming the reputation of the complainant.

6. When the case was pending trial, after examination of the prosecution side, the son of the accused has entered as D.W.1 and he sought to file certified copies of the balance sheet pertaining to the complainant company (respondent herein) which was obtained by him from the Registrar Companies and wanted to mark the same as defence evidence and accordingly, he filed the above C.M.P.No.396 of 2018.

7. Before the trial Court, it was contended that the said document cannot be marked on the side of the defendant and the learned Judicial Magistrate No.IX, Saidapet in C.C.No.7140 of 2004 dismissed the petition.

8. The learned counsel for the petitioner would submit that he has filed an application under Section 74 read with 76 and 77 of the Indian Evidence Act, to receive the documents as an evidence, that are certified copy of the balance sheet pertaining to the respondent company for the year 2001, 2002, 2004, 2005, 2006 and 2007, which have been issued by the Registrar of Companies and without proper analysis as to the nature of the document, the trial Court has rejected the claim and hence, prayed for allowing the petition.

9. The learned counsel for the petitioner has relied upon the decision reported in 2009-2-LW(crl)1004 [Rakkappan Vs.State rep.by the Inspector of Police] which reads as follows:-

" Criminal-Admission of Evidence- Present revision filed against order whereby rejected prayer of petitioner that documents are certified copies of legal proceedings and they are admissible in evidence and held, if certified copies of public documents are filed in Court and even without formal making, criminal Court can take into account at request of either of parties and criminal Court as its judicial discretion could assign markings to them and three documents are certified copies issued by Courts pertaining to legal proceedings and document are certified copies of anticipatory bail application which accused filed before Sessions Court and Public Prosecutor could have refrained from objecting to such documents and he could have given his consent for formal marking and in absence of such formal consent having been given by Public Prosecutor, Court could have very well observed that those certified copies could be relied on by Court and therefore order of Sessions Court set aside and documents are ordered to be retained on file and hence, revision ordered accordingly."

And another decision reported in (2011)162PLR82 [Pyare Lal Vs.Mehar Singh and others] which reads as follows:-

" Civil-Admissibility of Evidence - Sections 74 and 76 of the Indian Evidence Act, 1872 and High Court Rules and revision sought against order declining permission to give evidence with reference to certain documents and which had already been filed in Court and marked but which had not been exhibited to be read in evidence and held, certified copied produced from Court records must be exhibited as evidence and relevance would be a matter of argument, if Court cannot take a summary decision as regards same and in present case, if documents had already been filed and marked, it would not be even a necessary requirement for a party to examine himself for exhibiting them as evidence and trial Court directed to assign

exhibit numbers on side of plaintiff and take up case for arguments in right earnest and Civil revision allowed."

10. The learned counsel for the respondent has submitted that since the D.W.1 has no knowledge about the said document and hence for the cross-examination on the document sought to be marked, he must be in a position to give evidence and therefore, contended that the order of the trial Court is sustainable.

11. After perusing the records and hearing both sides, admittedly, the document i.e., sought to be filed by the revision petitioner herein through D.W.1 are certified copies of the balance sheet issued by the Registrar of companies on the application made by the D.W.1. In view of the nature of the document which squarely falls under the Section 74 of the Indian Evidence Act that they are all marked to be document, admissibility of the document and relevancy of the document has to be gone into only at the time of trial.

12. It is evident that if the certified copies of the document are filed in Court even without formal marking are proved thereto, the learned Magistrate or Sessions Court can take into account at the request of either of the parties or the same may be marked. Since these 5 documents referred are certified copies issued by the Registrar of companies, I do not find that the order of the trial Court is sustainable in law and the same is liable to be set aside and this revision petition is allowed and the matter is remitted back to the trial Court to mark those documents and to proceed with trial, in accordance with law, and to complete the trial, within a period of four months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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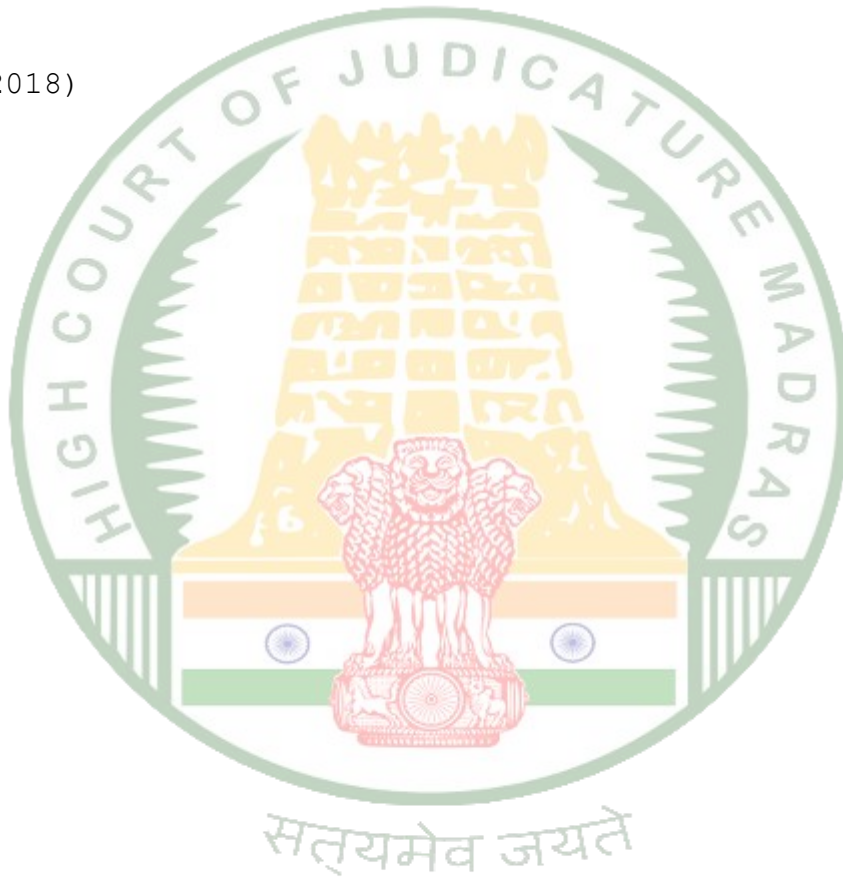
To

The IX Metropolitan Magistrate Saidapet,
Chennai.

+ 1 cc to Mr. T.R. Ravi, Advocate Sr.46055
+ 1 cc to Mr. S. Giritharan, Advocate SR.46354

Crl.R.C.No.491 of 2018 and
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(CS-VII)
EU(23/07/2018)



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