

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.9868 of 2018 & Crl.M.P. No.5231 of 2018

G. Murugesh

: Petitioner

vs.

State represented by
the Sub Inspector of Police
Thirumangalam Police Station
Chennai

: Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to direct the respondent to trace and produce the original undertaking letter of the accused before the X Metropolitan Magistrate Court, Egmore, in C.C. No.4830 of 2010 and mark the same as one of the exhibits on the prosecution side or else to direct the Court to record the missing document and thereby, directing to reconstruct the bundle with xerox copy of the missing document and thereafter, to mark the same as prosecution side exhibit.

For petitioner : M/s. T.K.S. Bharathy Anandraj

For respondent : Mrs. M. Prabhavathi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking to direct the respondent to trace and produce the original undertaking letter of the accused before the X Metropolitan Magistrate Court, Egmore, in C.C.No.4830 of 2010 and mark the same as one of the exhibits on the prosecution side or else to direct the Court to record the missing document and thereby, directing to reconstruct the bundle with xerox copy of the missing document and thereafter, to mark the same as prosecution side exhibit.

2 Today, Mr. K. Deepan Chakravarthy, Gr. I P.C., V-5, Thirumangalam Police Station is present before this Court.

3 On 30.07.2018, this Court passed the following order:

"The de facto complainant is the petitioner herein.

The accused is facing prosecution in C.C. No.4830 of 2010 before the X Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 406, 420 and 506 (II) IPC.

It is the case of the de facto complainant that the accused had given an undertaking letter dated 27.09.2007, the original of which, forms part of the relied upon documents filed along with the final report. It is the further case of the de facto complainant that the said document also has been sent to the Tamil Nadu Forensic Science Department for signature and handwriting comparison.

Now, it is contended by the de facto complainant that the original undertaking letter dated 27.09.2007 is not available in the Court records.

The Registry is directed to send a copy of this order to the X Metropolitan Magistrate, Egmore, Chennai and call for a report with regard to the availability or otherwise of the original undertaking letter dated 27.09.2007 so that further orders can be passed with regard to the reconstruction of the said document. The report shall reach this Court in three weeks.

Post on 20.08.2018.

There shall be an order of interim stay till then."

4 Subsequently, on 23.08.2018, this Court passed the following order:

"On 30.07.2018, this Court passed a detailed order directing the X Metropolitan Magistrate, to send a report to this Court.

Learned Additional Public Prosecutor submitted that the X Metropolitan Magistrate is on medical leave for the last 1 ½ months.

Therefore, the Registry is directed to send a copy of this order to the Chief Metropolitan Magistrate, Egmore, Chennai, to send a report with

regard to the document referred to in the order dated 30.07.2018. A copy of the order dated 30.07.2018 be sent to the Chief Metropolitan Magistrate, for compliance and to send a report to the Court on or before 06.09.2018.

Post on 06.09.2018."

5 In pursuance of the aforesaid two orders, the X Metropolitan Magistrate, Egmore, has sent a report dated 16.08.2018, wherein, she has stated as follows:

"2. In this regard, it is learnt from the Memo filed by the APP who had represented the case during April 2015 that the FIR pertaining to the above CC was received originally by the XIII Metropolitan Magistrate, Egmore, and case records were subsequently sent to this Court in which the above undertaking letter was not available. Hence, letter dated 22.04.2015 was sent to the XIII Metropolitan Magistrate Court for tracing and furnishing the same to this Court. Reminders dated 20.09.2016, 26.09.2016, 20.04.2018 and 04.06.2018 were also sent. Efforts have also been made to trace the aforesaid original undertaking in this Court and the same is still not traceable.

3 It is most humbly submitted that in view of the above, it is informed that the original undertaking letter dated 27.09.2007 is not available in this Court Records pertaining to C.C. No.4830 of 2010. This is for your honour's kind information."

6 From a reading of the above report, it appears that there is a possibility of the letter dated 27.09.2007, being available in the Court of the XIII Metropolitan Magistrate, Egmore. According to the de facto complainant, the police had sent the letter dated 27.09.2007 to the Tamil Nadu Forensic Science Department for comparing the signature in that with the admitted signatures of the accused and a report has also been received. It is not known whether the report in original is available in the case bundle.

7 Therefore, this Court directs the Chief Metropolitan Magistrate, Egmore, Chennai, to convene a meeting of the X Metropolitan Magistrate, Egmore, the XIII Metropolitan Magistrate, Egmore and the Inspector of Police, Thirumangalam Police Station and take necessary steps to trace the letter dated 27.09.2007 and the report of the hand writing expert. A copy of the letter dated 27.09.2007 is available in the case diary with the police. If the original letter dated 27.09.2007

is not available, it is open to the X Metropolitan Magistrate, Egmore, to record a finding that the document is irretrievably lost and obtain a photocopy of the said letter from the case diary and reconstruct it, after certifying the same. Likewise, if the report of the handwriting expert is not available, steps may be taken to obtain a copy of the report from the Tamil Nadu Forensic Science Department.

This Criminal Original Petition stands ordered accordingly. Connected Crl.M.P. is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Sub Inspector of Police
Thirumangalam Police Station
Chennai
- 2 The X Metropolitan Magistrate Court
Egmore
Chennai
- 3 The XIII Metropolitan Magistrate Court
Egmore
Chennai
- 4 The Cheif Judicial Magistrate,
Egmore, Chennai.
- 5 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1 cc Mr.T.K.S.Bharathy Anandraj, Advocate, SR.No. 69029

Crl.O.P. No.9868 of 2018

GJ-II(CO)
CSL/23.10.2018