

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.10488 of 2018

and

Crl.M.P.No.5367 of 2018

Vetrivel

...Petitioner

Vs

Sri Durga Agencies,
Mr.J.Chokkalingam,
Proprietor,
S P - 89, Ambattur Industrial Estate,
Ambattur,
Chennai - 600 058.

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 17.01.2018 made in C.M.P.No.2434 of 2017 in C.C.No.314 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur, by allowing this Criminal Original Case.

For Petitioner :Mr.R.Sugumaran

ORDER

This petition has been filed to set aside the order dated 17.01.2018 made in C.M.P.No.2434 of 2017 in C.C.No.314 of 2016 on the file of the learned Judicial Magistrate Fast Track at Magisterial Level, Alandur.

2.For the sake of convenience, the parties will be referred to as the complainant and the accused. The complainant initiated a prosecution in C.C.No.314 of 2016 under Section 138 of the Negotiable Instruments Act against the accused, which is now pending trial before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Alandur.

3.The trial has commenced with the examination of the complainant as P.W.1. Along with the complaint, the complainant had filed 7 documents of which, we are now concerned with Document Nos.6 and 7, namely, the statutory notice dated 12.06.2014 and the Photocopy of the postal acknowledgment card for evidencing service of the notice on the accused.

4.The complainant was permitted to mark Ex.P.1 to Ex.P.4 including the statutory notice dated 12.06.2014. At that juncture, the petitioner filed C.M.P.No.2434 of 2017 in C.C.No.314 of 2016 under Section 65 (c) of the Evidence Act contending that the original Acknowledgment Card was lost in the Advocate Office and only the photocopy of the same is available and that the photocopy may be permitted to be marked as secondary evidence.

5.Naturally, the accused filed a detailed counter objecting the same. The trial Court, by the impugned order dated 17.01.2018 has dismissed the petition, challenging which, the complainant is before this Court.

6.Heard the learned counsel appearing for the complainant.

7.The trial Court has extracted the truncated portion of Section 65 (c) of the Evidence Act and has held that the loss of the original Acknowledgment Card was on account of negligence of the petitioner and therefore, the petitioner cannot be permitted to mark the photocopy.

8.In the opinion of this Court, this interpretation is not correct for the simple reason that there is a comma, after the word "lost" followed by "or". This means that the portion relied upon by the Magistrate is disjunctive of the word "lost". Be that as it may, it was not necessary for the complainant to have filed the petition in CrI.M.P.No.2434 of 2017 at all, in view of the decision of the Hon'ble Apex Court in Bipin Shantilal Panchal vs. State of Gujarat and another reported in (2001) 3 Supreme Court Cases 1, wherein the Supreme Court has held that a document can be marked subject to objection and the same can be decided at the time of passing the final Judgment, so that the Appellate Court will have the opportunity to consider whether the rejection or acceptance of the document was correct or not.

9. In view of this legal position, if this set aside petition is admitted and Stay is granted, it will prolong the trial and therefore, this Court is not inclined to issue notice to the respondent, as no order prejudicial to the accused is passed by this Court. Hence, the order of the trial Court is set aside, but however, the photocopy of the acknowledgment card may be marked subject to the objections by the accused and the same shall be considered by the trial Court, at the time of passing of the final Judgment in C.C.No.314 of 2016.

With the above observations and directions, the Criminal Original Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dh/mps

To

1. The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Alandur.

2. The Public Prosecutor,
Madras High Court,
Chennai.

+1 CC to Mr.A.V.Arun, Advocate Sr.No.24725

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Crl.O.P.No.10488 of 2018

and

Crl.M.P.No.5367 of 2018

NRI (CO)
KP(18/04/2018)