

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

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

Crl.O.P. Nos.3674 and 3675 of 2018
and
Crl.M.P.Nos.1660 and 1661 of 2018

R.Moses

...Petitioner in both
Crl.O.Ps.

vs.

State Rep. by
The Inspector of Police,
CBCID, Coimbatore.

...Respondent
in both Crl.O.Ps.

Criminal Original Petitions filed under Section 482, Cr.P.C. to set aside the order passed by the learned Chief Judicial Magistrate, Coimbatore, in Crl.M.P.Nos.1407 and 1408 of 2018 respectively in C.C.No.101 of 2010 by an order dated 18.01.2018.

For petitioner : Mr.S.Suresh
in both petitions

For Respondent : Mrs.Kritika Kamal. P
in both petitions Government Advocate (Crl.Side)

C O M M O N O R D E R

The petitioner is facing a prosecution in C.C.No.101/2010 before the Chief Judicial Magistrate, Coimbatore. The allegation of the prosecution is that; A1 and A2 had applied for a bank loan with Canara Bank, Coimbatore Branch; that they submitted the property documents of Kalikutty as collateral security; that A3 appeared before the bank officials claiming himself to be Kalikutty and deposited in the documents; that the account came to be declared as "Non-Performing Asset" (NPA); that when the bank started taking action for recovery of the money, it came to light that the original owner Kalikutty had not mortgaged the property and that A3 had impersonated Kalikutty. Hence, the FIR and the consequent final report. The prosecution examined their witnesses, who were duly cross-examined by the accused. After that, the accused were

questioned under section 313 Cr.P.C. about the incriminating circumstances appearing against them in the evidence of the prosecution witnesses. The accused denied the incriminating circumstances. Thereafter, opportunity was given to the accused to examine defence witnesses. A1 examined a Bank official as DW1. In the evidence of DW1, he seems to have stated that an internal enquiry was conducted by one Mr.Sunil, an official of Canara Bank, who in his report has stated that the original Kalikutty had appeared before the Branch Manager at the time of submitting the title deeds. Therefore, A3 filed Cr1.M.P No.1407/2017 and Cr1.M.P No.1408/2017 under Section 91 Cr.P.C. and Section 242 Cr.P.C. respectively for summoning the enquiry report and for examining Mr.Sunil as defence witness. Cr1.M.P.Nos.1407 and 1408 of 2017 were dismissed by the trial Court on 18.01.2018, aggrieved by which, A3 is before this Court.

3.Heard Mr.S.Suresh, learned counsel appearing for A3 and learned Government Advocate (Criminal side) appearing for the respondent.

4.Mr.Suresh, learned counsel for the petitioner/A3 submitted that the evidence of Sunil will go to show that A3 had not impersonated Kalikutty and that the original Kalikutty had appeared before the Branch Manager at the time of obtaining the loan.

5.In the opinion of this Court, the report in a domestic enquiry, will have no binding effect on the criminal court. In the criminal court, the prosecution is expected to prove the charges via relevant and admissible evidence whereas in a domestic enquiry, the rules of evidence as applicable to a criminal court, will not apply. That apart, Sunil was not an eyewitness to the transaction. He was only an Enquiry Officer, who has conducted internal enquiry by collecting information and statements from various persons. However, the police investigation has been conducted under Chapter XII of Cr.P.C and has culminated in the charge sheet. Witnesses have also been examined to establish the charge. However, it is for the trial Court to appreciate the evidence of those witnesses to see if the prosecution has proved the case beyond reasonable doubt. Thus, neither the enquiry report nor the evidence of Sunil can in no way enhance the case of the accused in the present facts and circumstances. In such view of the matter, these are not fit cases, in which the orders of the trial court require interference. Hence, both the criminal original petitions are dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vri

To

1.The Inspector of Police,
CBCID, Coimbatore.

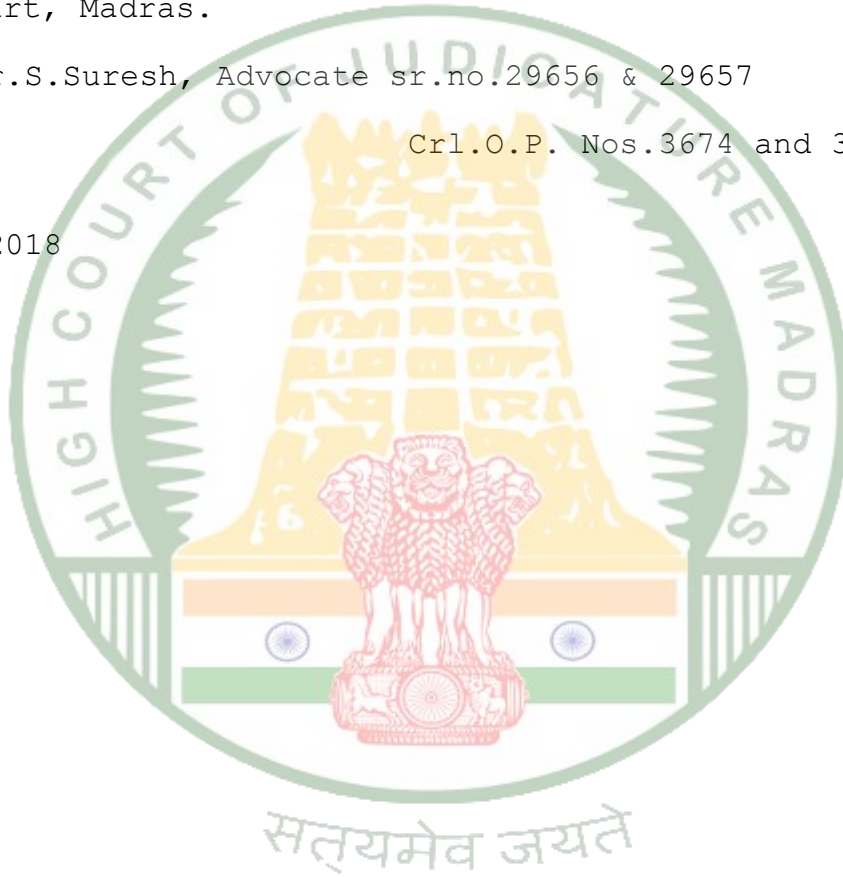
2.The Chief Judicial Magistrate,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.Suresh, Advocate sr.no.29656 & 29657

Crl.O.P. Nos.3674 and 3675 of 2018

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