

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

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

Crl.O.P.Nos.14710 and 14711 of 2018
and
Crl.MP.Nos.7447 and 7448 of 2018

1.Shah Advertisers,
Rep.by its Proprietor, A.K.Noordeen Shah,
Near Govt. Higher Secondary School,
NH-17, Thalikulam, Thrissur District - 680569, Kerala.

2.A.K.Noordeen Shah,
S/o.Kunhimon,
Ambalathuveetil House,
Beach Road, Thalikulam,
Thrissur District-680 569, Kerala.

Petitioners in both petitions

vs.

M/s.AAD WELL Advertising Agencies,
Prop.Thiru K.Kumaravel, (M/A 49 yrs),
S/o.Kuppusamy,
No.154/2, Rathinasingh Kulam Street,
Near CMC Eye Hospital, Kosapet, Vellore- 632 001.
Also at: No.16, 3rd Street, Sadukkara Madam,
Salavanpet, Vellore Town, Vellore.

Respondent in both Petitions

Criminal Original Petition filed under Section 482 Cr.P.C.
to set aside the order dated 13.12.2017 passed by the learned
Judicial Magistrate (Fast Track Court), at Vellore in
Crl.M.P.Nos.1643 and 1741 of 2017 in C.C.No.97 of 2016.

For petitioners : Mr.S.Anil Sandeep
in both Petitions

C O M M O N O R D E R

These criminal original petitions have been filed to set
aside the orders dated 13.12.2017 passed by the learned Judicial
Magistrate (Fast Track Court), at Vellore in Crl.M.P.Nos.1643
and 1741 of 2017 in C.C.No.97 of 2016.

2. For the sake of convenience, the petitioners and the respondent will be referred to as the accused and the complainant respectively.

3. The complainant has initiated a prosecution in C.C.No.97 of 2016 before the Judicial Magistrate (Fast Track Court), Vellore, under Section 138 of the Negotiable Instruments Act, 1881 against the accused. During trial, the accused filed a petition in CrI.MP.No.1546 of 2017 under Section 91 Cr.P.C., for production of certain documents, which has been allowed by the trial Court. As a sequel, the complainant filed CrI.MP.No.1643 of 2017 under Section 311 Cr.P.C. and CrI.MP.No.1741 of 2017 under Section 91 Cr.P.C seeking permission to mark eight documents and for recalling PW.1 for the purpose of marking the said documents. The accused filed a counter opposing the said two petitions. After hearing either side, the trial Court, by separate orders dated 13.12.2017, has allowed the petitions, aggrieved by which, the accused are before this Court.

4. Mr.S.Anil Sandeep, learned counsel for the accused assailed the orders by contending that the complainant is seeking permission to mark the photocopies of the documents which cannot be permitted.

5. This Court gave its anxious consideration to the submission of the learned counsel for the accused.

6. It is true that a photocopy of a document is only a secondary evidence and the same can be marked only if the conditions set out in Section 65 of the Evidence Act stand satisfied. It is also a trite law that mere marking of the documents is not a proof of the same. In Bipin Shantilal Panchal vs. State of Gujarat and another [AIR 2001 SC 1158], the Supreme Court has held that a document can be marked subject to the objections and at the time of final disposal the Judge is required to give a finding on that aspect, so that the Appellate Court can also re-consider the findings.

7. Mr.S.Anil Sandeep, learned counsel for the accused submitted that it is possible for the complainant to file a fabricated photocopy of the document and claim that the same is a genuine secondary evidence. It is open to the accused to test the genuineness and the veracity of the secondary evidence during the cross-examination of the complainant and also adduce positive evidence to show that the secondary evidence is a fabricated one. Any such facts asserted by the complainant or the accused requires to be proved before the trial Court and the standard of proof has been set out in the definition clause of the word "proved" in the Evidence Act. Hence, if the complainant is able to satisfy the conditions laid down in

Section 65 of the Evidence Act, there cannot be any bottleneck for proving the secondary evidence. It is made clear that marking of the documents is not automatic proof of the same.

8. Hence, these petitions are closed with liberty to the accused to raise the objections before the trial Court and the trial Court shall proceed with the trial, bearing in mind the law laid down by the Supreme Court in Bipin Shantilal Panchal (supra). Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Learned Judicial Magistrate (Fast Track Court),
Vellore.

2.The Public Prosecutor,
High Court,
Madras.

+2cc to Mr.S.Anil Sandeep, Advocate sr.no.34673

CrI.O.P. Nos.14710 & 14711 of 2018

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