

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

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

Crl.O.P.No.17309 of 2018

S.Chandrasekaran

..Petitioner

vs.

S.R.Sivalingam

..Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the return docket order of the lower Court in Crl.MP.SR.No.2048 of 2018 dated 26.06.2018, on the file of the Judicial Magistrate No.I, Tindivanam and permit the petitioner to reconstruct and substitute Rs.2,00,000/- cheque case with that of the original complaint of Rs.40,00,000/- cheque case.

For petitioner : Mr.V.V.Sairam

O R D E R

This Criminal Original Petition has been filed seeking to set aside the return docket order dated 26.06.2018 passed in Crl.MP.SR.No.2048 of 2018 on the file of the Judicial Magistrate No.I, Tindivanam and permit the petitioner to reconstruct and substitute Rs.2,00,000/- cheque case with that of the original complaint of Rs.40,00,000/- cheque case.

2. The petitioner filed two private complaints in C.C. Nos.277 and 278 of 2016 before the Judicial Magistrate No.1, Tindivanam, against one Durga Devi and Sivalingam respectively under Section 138 of the Negotiable Instruments Act, 1881. Admittedly, Durga Devi is the wife of Sivalingam. In the complaint filed in C.C. No.277 of 2016 against Durga Devi, the amount of cheque is Rs.2 lakhs. In the complaint in C.C. No.278 of 2016 filed against Sivalingam, the amount of cheque is Rs.40 lakhs. It appears that the petitioner and Durga Devi, the accused in C.C. No.277 of 2016, arrived at a settlement, pursuant to which, C.C. No.277 of 2016 was dismissed as withdrawn on 04.05.2017. However, during the course of the trial in C.C. No.278 of 2016 against Sivalingam, the counsel for the complainant/petitioner found that the original complaint was

not available in the Court bundle. Therefore, he filed a petition for reconstruction of the case bundle, which has been returned by the Trial Court on 26.06.2018, challenging which, the petitioner/complainant is before this Court.

3.Heard the learned counsel for the petitioner/complainant.

4.On enquiry by this Court, the Judicial Magistrate No.I, Tindivanam, informed this Court that the complaint in C.C. No.277 of 2016 and the complaint in C.C. No.278 of 2016 are distinct and different as stated above. However, there appears to be some mixing of the case records by the complainant, on account of which, the first two papers in the complaint in C.C. No.278 of 2016 relate to a different case.

5.Be that as it may, it is clear that the sworn statement that was recorded in C.C. No.278 of 2016 relates to the cheque for Rs.40 lakhs and the accused is Sivalingam. The impugned cheque, return memo and the notice under Section 138 of the Negotiable Instruments Act relate to the prosecution against Sivalingam. In fact, Sivalingam has been appearing before the Trial Court and has been participating in the trial. In such view of the matter, this Court directs the Trial Court reconstruct the records and set right the anomaly.

This Criminal Original Petition stands disposed of with the above direction.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk/cad

To

The Judicial Magistrate No.I,
Tindivanam.

+1cc to Mr.V.V.Sairam, Advocate, S.R.No.45242.

BM 12/07/2018

Cr1.O.P.No.17309 of 2018