

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.24153 of 2012 and
Crl.M.P.Nos.1 & 2 of 2012

S.Sridhar
S/o.K.Saibabha,
Proprietor, M/s.SSS Enterprises,
No.1, Murthy Raja Street, Agraham,
Chennai - 600 082. ... Petitioner

Versus

M/s.Foods, Fats and Fertilizers,
No.222, Fountain Plaza,
1st Floor, Pantheon Road,
Egmore, Chennai - 600 008. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in Crl.M.P.No.7664 of 2010 dated 07.06.2012 passed by the learned V Metropolitan Magistrate, Egmore.

For Petitioner : M/s.R.Ganesh Kumar

ORDER

The petitioner is the accused in C.C.No.7925 of 2008 on the file of the V Metropolitan Magistrate Court, Egmore for the offence punishable under Section 138 of the Negotiable Instruments Act.

2.Since the petitioner was convicted by the learned V Metropolitan Magistrate, Egmore in C.C.No.7925 of 2008 dated 15.11.2008, against which he has preferred an appeal in C.A.No.335 of 2008 before the IV Additional Sessions Judge, Chennai. The learned IV Additional Sessions Judge, Chennai by its order dated 04.06.2010 had remanded the case in C.C.No.7925 of 2008 to the trial Court directing to conduct retrial and dispose the case on merits after giving fair opportunities to the defence by examining the witnesses and marking the certain documents.

3. During the pendency of the appeal in C.A.No.335 of 2008 on the file of the IV Additional Sessions Judge, Chennai, the petitioner has filed CrI.M.P.Nos.3487 & 3488 of 2010, under Section 391 of Cr.P.C and 386(b)(i) Cr.P.C respectively to adduce additional evidence and sought for remanding the matter for retrial to the trial Court, on the ground that the liability of the petitioner towards the respondent is only for a sum of Rs.15,428.15/- (Rupees fifteen thousand four hundred and twenty eight and fifteen paise only), for which he has documents to substantiate the same. During the course of the business, blank cheque was given to the respondent, which has been misused and the he has filled an amount of Rs.6,89,214/- (Six lakhs eighty nine thousand two hundred and fourteen only) and initiated the complaint under Section 138 of the Negotiable Instruments Act.

4. The learned counsel for the petitioner would submit that the petitioner has no liability for such amount, the document to prove the same is with the respondent. The said document was misplaced by the petitioner during the trial. Despite due diligence and effort was taken to trace out, the document could not be found during the trial, due to which, PW1 could not be confronted with the document and cross-examined.

5. He would further submit that the lower appellate Court by Judgment dated 04.06.2010 had remanded the case in C.C.No.7928 of 2006 directing the trial Court to conduct retrial and dispose the case on merits after giving fair opportunities to the defence by examining the witnesses and marking certain documents.

6. In the meanwhile, the respondent has filed petition under Section 311 of Cr.P.C in CrI.M.P.No.7664 of 2010 before the trial Court to permit himself to let-in evidence again only for the purpose of marking the said document. The learned counsel for the petitioner opposed the same on the ground that the lower appellate Court specifically stated in its Judgment that the retrial is to cross-examine the prosecution witness regarding liability and marking certain admitted documents are to be recorded.

7. It is seen that the document, which is seems to have been omitted is document No.7, which has been already cited and filed along with the complaint i.e., the delivery challan, dated 14.11.2005 of the respondent.

8. In view of the limited prayer sought for by the petitioner, the trial Court is directed to complete the trial within a period of two months from the date of receipt of a copy of this order, after giving fair chance to the defence by examining witness and marking certain documents including

document No.7 (delivery challan dated 14.11.2005) as directed by the lower appellate Court by its Judgment dated 04.06.2010 in C.A.No.335 of 2008.

9.With the above said observation, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

vv2

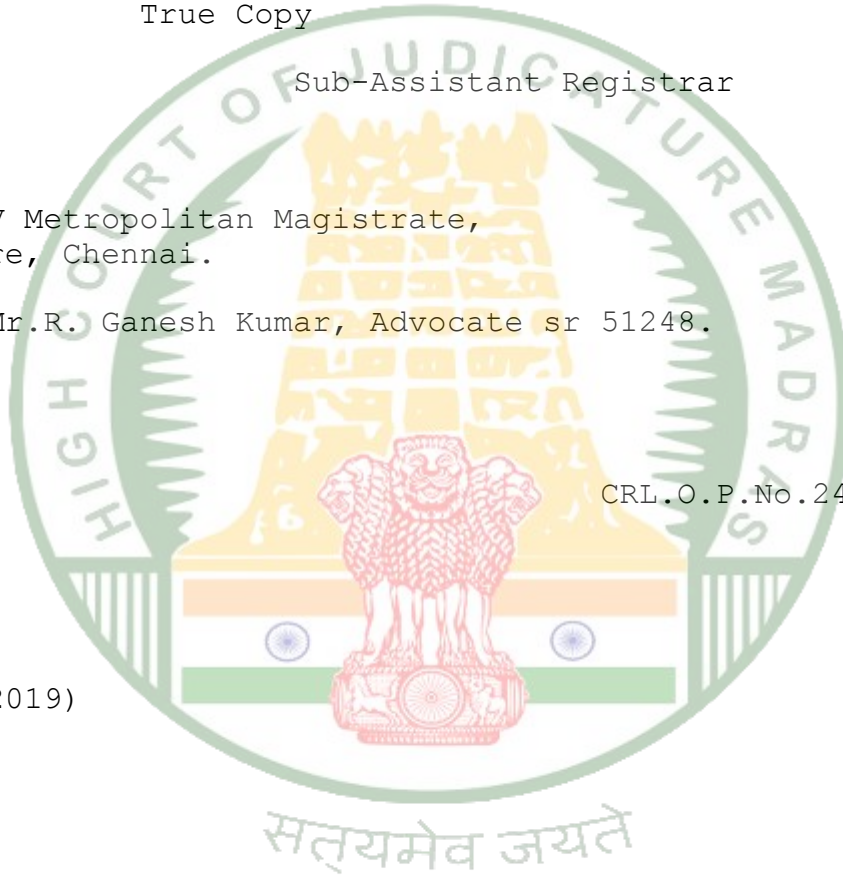
To

The V Metropolitan Magistrate,
Egmore, Chennai.

+1 CC to Mr.R. Ganesh Kumar, Advocate sr 51248.

CRL.O.P.No.24153 of 2012

CP(CO)
SP(15/07/2019)



WEB COPY