

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3843 of 2019
and Crl.MP.No. 2364 of 2019

S.K.Srinivasan ...Petitioner/Petitioner/Complainant

Vs.
Chitramughi ...Respondent/ Respondent/Accused

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 10.12.2018 passed in Crl.M.P.No.3114 of 2018 in C.C.No.3392 of 2012 on the file of the learned Metropolitan Magistrate, FTC-1, Egmore, Allikulam, Chennai.

For Petitioner : Mr.N.Baaskaran

For Respondent : Mr.J.T.Rajasuriya

O R D E R

This petition has been filed to set aside the order dated 10.02.2019 passed in Crl.M.P.No.3114 of 2018 in C.C.No.3392 of 2012 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Allikulam, Chennai, thereby dismissing the petition filed under Section 33 of Indian Stamp Act.

2. It is seen that the petitioner is the complainant in the proceedings initiated for the offence punishable under Section 138 of Negotiable Instruments Act as against the respondent. During the trial, the respondent/accused was examined as D.W.1 and marked the documents Ex.D1 and Ex.D2. Those documents are unregistered under stamped lease agreements. Therefore, the petitioner filed a petition under Section 33 of Indian Stamp Act to impound the documents Ex.D.1 and Ex.D.2 marked by the respondent in C.C.No.313 of 2013. Since the petition was dismissed by the impugned order, the petitioner filed this present petition to set aside the same.

3. It is relevant to extract the provision under Section 33 of the Indian Stamp Act as follows :-

"33. Examination and impounding of instruments - (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument, so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in 3[India] when such instrument was executed or first executed :

Provided that

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI, of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,-

(a) the 1[State Government] may determine what offices shall be deemed to be public offices;

and,

(b) the 1[State Government] may determine who shall be deemed to be persons in charge of public offices."

As per the proviso (a) to Section 33 of Indian Stamp Act, the Court cannot be compelled to necessarily impound the document invoking the provisions under Section 33 of the Indian Stamp Act. That apart the criminal proceedings initiated under Section 138 of Negotiable Instruments Act do not fall under either Chapter XII or XXXVI of Cr.P.C.

4. It is also seen that the documents Ex.D.1 and Ex.D.2 are nothing but rental agreement to show that the respondent was not residing in the address mentioned by the petitioner at the relevant point of time. Therefore, no prejudice would be caused if the documents Ex.D.1 and Ex.D.2 marked before the trial Court. According to the proviso (a) to sub Section (2) of Section 33 and proviso (d) to the Section 35 of the Indian Stamp Act, they are only to enable the Courts to receive un-stamped or insufficient stamp documents in evidence without insisting for impound of a document as required under Section 33(i)&(2) and bar under Section 35 of the Indian Stamp Act is to see that no criminal proceedings shall be frustrated on account of the said interdict contained in the Act and not to allow any criminal to escape. Therefore this Court is of the opinion that the order passed by trial Court does not warrant any interference from this Court. However, the learned Magistrate is directed to bear in mind the genuinity and evidential value of those documents, while deciding the issue.

5. With the above observations, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

rts

To

The Metropolitan Magistrate,
FTC-1, Egmore, Allikulam, Chennai.

+1cc to Mr.N.Baskaran, Advocate SR.No.32062

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RJI(CO)
GMY(18/06/2019)