

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 19445 of 2014

Sekar @ Shankar

... Petitioner

Vs.

The State by

The Inspector of Police,
CCIW, CID, Salem,
Crime No.4 of 2003.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order of the learned III Additional District and Sessions Judge, Salem in CRP.No. 22 of 2013 dated 30.01.2014, thereby confirming the order of the learned Judicial Magistrate No.6, Salem in Crl.M.P.No.128 of 2013 in C.C.No.438 of 2004 dated 26.02.2013.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor.

O R D E R

This petition has been filed to set aside the order of the learned III Additional District and Sessions Judge, Salem in C.R.P.No. 22 of 2013 dated 30.01.2014, thereby confirming the order of the learned Judicial Magistrate No.6, Salem in Crl.M.P.No.128 of 2013 in C.C.No.438 of 2004 dated 26.02.2013.

2. The learned counsel appearing for the petitioner submitted that the petitioner is arraigned as second accused in C.C.No.438 of 2004 on the file of the learned Judicial Magistrate No.6, Salem, thereby taken cognizance for the offences punishable under Sections 120B, 409, 467 and 471 of IPC. In the above said case, the petitioner filed a petition under Section 243 of Cr.P.C., to send the documents to the Hand Writting Experts for comparing the signature in the cheques with his original admitted signature. It was dismissed by the trial Court and the same was also confirmed by the lower appellate Court. He further submitted that the prosecution closed their witnesses on 25.11.2011 and thereafter under Section 313 of

Cr.P.C., questioning was also over. The charges framed as against the petitioner under Sections 120B, 409, 467 and 471 of IPC. Therefore, the evidence of Hand Writting Expert is very much necessary, since the case is only as against the documents.

2.1. He further submitted that there is absolutely no delay on the part of the petitioner in the trial proceedings, since the first accused failed to appear before the trial Court as such NBW was issued as against him. As such the evidence of prosecution, could not be completed in time. As far as the petitioner is concerned, he did not drag the trial at any point of time. He further submitted that there is absolutely no prejudice would be caused, if the petition for getting hand writing experts opinion is allowed. Therefore, he prayed to allow this petition.

3. Per contra, the learned Additional Public Prosecutor submitted that the petitioner is arraigned as second accused. As against the petitioner and other accused, the respondent filed a final report for the offences punishable under Sections 120B, 409, 467 and 471 of IPC and the same has been taken cognizance by the trial Court in C.C.No.438 of 2004 on the file of the learned Judicial Magistrate-VI, Salem. After questioning under Section 313 of Cr.P.C., the petitioner filed a petition under Section 243 of Cr.P.C. to send the documents for getting Hand Writing Expert's opinion to drag the trial proceedings. The said petition was rightly dismissed by the trial Court and the same was confirmed by the District Court. Therefore, he prayed for dismissal of this petition.

4. Heard Mr.K.V.Sridharan, learned counsel appearing for the petitioner, Mr.M.Mohammed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

5. The petitioner and another have been charged for the offences under Sections 120B, 409, 467 and 471 of IPC in C.C.No.438 of 2004 on the file of the learned Judicial Magistrate No.VI, Salem. After questioning under Section 313 of Cr.P.C., the petitioner filed a petition under Section 243 of Cr.P.C. for examination of certain documents and opinion of the Hand Writing Expert, regarding the signature found in the documents. It was dismissed by the trial Court for the reason that the petition has been filed after the lapse of considerable time. It is also seen that on the part of the petitioner, there is absolutely no delay and only because of the abscond of the first accused, the NBW has been issued as against him. Thereafter under Section 313 of Cr.P.C., questioning over and the petition under Section 243 of Cr.P.C. has been filed.

6. Considering the above facts and circumstances, this Court feels that the petitioner may be given one more opportunity to defend his case in a full fledged manner, since the petitioner was charged for the offences under Sections 120B, 409, 467 and 471 of IPC. Accordingly, the order passed by the learned III Additional District and Sessions Judge, Salem in C.R.P.No. 22 of 2013 dated 30.01.2014, thereby confirming the order of the learned Judicial Magistrate No.6, Salem in CrI.M.P.No.128 of 2013 in C.C.No.438 of 2004 dated 26.02.2013, is set aside and the trial Court is directed to send the documents for getting opinion of the Hand Writing Expert forthwith and complete the entire proceedings within a period of eight weeks from the date of the receipt of a copy of this Order.

7. With the above directions, this Criminal Original Petition stands allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The III Additional District and Sessions Court,
Salem
2. The Judicial Magistrate Court No.6,
Salem
3. The Inspector of Police,
CCIW, CID, Salem.
4. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.K.V.Sridharan, Advocate Sr.35456

CRL.O.P.No. 19445 of 2014

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