

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.775 of 2020

P.S.Dhanasekar

... Petitioner

Vs.

State by Inspector of Police,
CBI/ACB, Chennai.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set-aside the order dated 05.08.2019 passed in Crl.M.P.No.4277 of 2019 in C.C.No.9 of 2006 passed by the XI Additional Special Judge, call for the records and consequently order for the return of "document vide.D.43" (Sale deed doc.No.951/2002, dated 03.04.2002) on the file of the XI Additional Sessions Court.

For Petitioner : Mr.M.P.Karunakaran

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor

ORDER

This Criminal Revision has been filed by the petitioner/accused to set aside the order dated 05.08.2019 made in Crl.M.P.No.4277 of 2019 in C.C.No.9 of 2006 passed by the learned XI Additional Special Judge for CBI Cases, Chennai.

2.The learned counsel for the petitioner submitted that the petitioner is LW54 in C.C.No.9 of 2006. The petitioner availed loan in HUDCO Bank by pledging his original document No.951/2002, dated 03.04.2002 of the Property. The loan amount has been repaid and settled. Thereafter, the petitioner sought for return of original title deed from the Bank. The officials of the Bank informed that the document has been taken into custody and part of document in C.C.No.9 of 2006, which is pending on the file of XI Additional Special Judge for CBI Cases, Chennai.

3.The learned counsel for the petitioner further submitted that in order to retrieve the original document from the custody of the trial Court, the petitioner filed a petition in CrI.M.P.No.4277 of 2019 in C.C.No.9 of 2006. The learned XI Additional Special Judge for CBI Cases, Chennai by order dated 05.08.2019 dismissed the petition for the reason that the original document of the petitioner in document No.951 of 2002, dated 03.04.2002 was filed as LD43 on the side of the prosecution. This LD43 is now marked as Ex.P19 through PW2/Approver on the side of the prosecution. In this case, the cross examination of PW2 is yet to be completed. Hence, the learned trial Judge found that the original document would be necessary for the purpose of the cross examination by the defence side and the accused would raise objection for substitution of original document.

4.The learned Special Public Prosecutor appearing for the respondent submitted that a direction may be issued for return of original document to the petitioner by substituting it with certified copy and further, the petitioner to file an affidavit of undertaking that he shall submit the document as and when required by the trial Court during trial.

5.It is seen that the apprehension is misplaced, since the original document already marked as part of Ex.P19 and now, it has become a Court record and the same can be substituted by way of certified copy. This certified copy can be construed as primary evidence. There can be no objection by the accused. Further, the certified copy of the document satisfies the condition of marking secondary evidence as primary evidence.

6.The learned counsel for the petitioner undertakes to produce the original document as and when directed by the Trial Court and the petitioner to file affidavit of undertaking to that effect.

7.In view of the undertaking given by the learned counsel for the petitioner, the order dated 05.08.2019 made in CrI.M.P.No.4277 of 2019 in C.C.No.9 of 2006 passed by the learned XI Additional Special Judge for CBI Cases, Chennai is set aside and the revision is, accordingly, allowed, with the direction that the learned XI Additional Special Judge for CBI Cases, Chennai to return the original document No.951 of 2002, dated 03.04.2002, which is a part of Ex.P19, by substituting the same with the certified copy and also obtain affidavit of

undertaking from the petitioner that he shall produce the original document No.951 of 2002, dated 03.04.2002 as and when called for.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

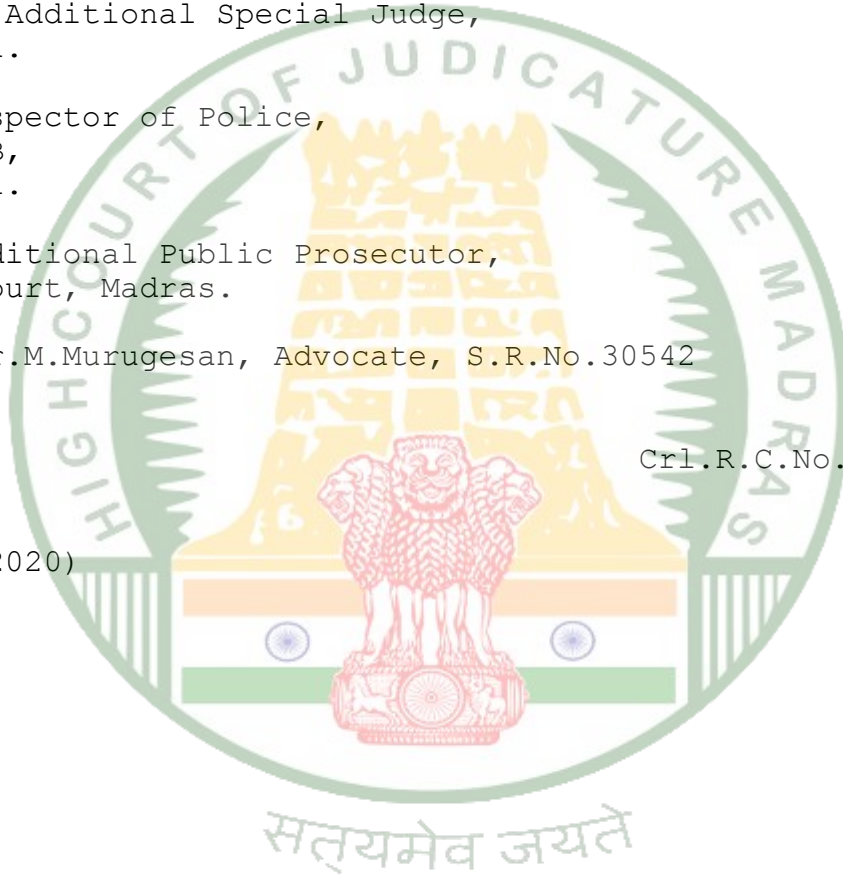
To

1. The XI Additional Special Judge,
Chennai.
2. The Inspector of Police,
CBI/ACB,
Chennai.
3. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Murugesan, Advocate, S.R.No.30542

CrI.R.C.No.775 of 2020

RR(CO)
RV(30/11/2020)



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