



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.11.2020

Delivered On : 22.12.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.628 of 2020

and

Crl.M.P.(MD)No.5917 of 2020

V.Muthukrishanan

.. Petitioner

Vs.

Thavamony Stephen Jeyaraj
Through his Power of Attorney
Samchandrasedkar

.. Respondent

Prayer : This criminal revision case filed under Sections 397(1) r/w. 401 of Cr.P.C., to call for the records and to set aside the order passed in Crl.M.P.No.4871 of 2020 in Crl.A.No.62 of 2019 passed by the learned IV Additional District Judge, Tirunelveli.

For Petitioner	: Mr.S.Velrajan
For Respondent	: Mr.G.Aravinthan

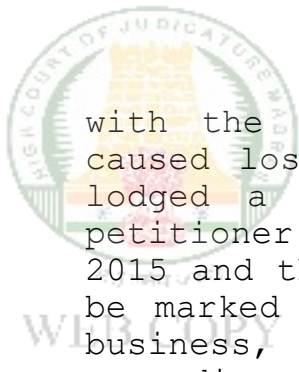
ORDER

This petition has been filed to set aside the order passed in in Crl.M.P.No.4871 of 2020 in Crl.A.No.62 of 2019 passed by the learned IV Additional District Judge, Tirunelveli.

2.The revision petitioner is the accused in the case registered under Section 138 of Negotiable Instruments Act. The revision petitioner has filed an appeal in Crl.A.No.62 of 2019, which is pending before the learned IV Additional District Judge, Tirunelveli. During the pendency of the criminal appeal, the revision petitioner herein filed a petition in Cr.M.P.No.4871 of 2020 under 391 of Cr.P.C. That petition was dismissed by the District Court. Against which, the petitioner has preferred this revision case.

3.The brief substance of the petition filed by the petitioner in Cr.M.P.No.4871 of 2020 is as follows : -

The respondent/complainant is residing abroad. He used to invest money in properties and other business, as per the directions of the petitioner. During the year 2009 - 2011, the revision petitioner purchased immovable properties in the name of the complainant and his wife. On the guidance of the complainant, the petitioner entered into an agreement with one Nagarajan and invested Rs.1,50,00,000/-. The petitioner has also invested Rs.71,00,000/-



with the said Nagarajan. The said Nagarajan committed fraud and caused loss to the petitioner and the complainant. The petitioner lodged a complaint before the Thiruvaryur Police Station. The petitioner has filed a civil case before this Court in C.S.No.25 of 2015 and the case was admitted by this Court. FIR and decree are to be marked in this case. The complainant to forgo the loss in the business, has pressurised the petitioner to execute a sale deed regarding the properties that belong to D.W.1, Nambi, the wife of the petitioner and the younger brother of the petitioner. He insisted the petitioner to execute two cheque leaves. The petitioner did not execute any cheque leaves under Section 138 of Negotiable Instruments Act. The cheque leaves were handed over to the complainant only on compulsion. The petitioner alone can give evidence on those facts. Ex.A1 cannot be treated as negotiable an instrument at all. The documents 6 to 10 alone can prove that sale deeds were executed in favour of the complainant. The petitioner is duty bound to disprove the case of the complainant and hence, an opportunity to mark the documents and to examine the petitioner has to be given.

4.Brief substance of the counter filed by the respondent in Crl.M.P.No.4871 of 2020 is as follows: -

4.1.This petition is filed only to drag on the proceedings. The documents are not relevant for deciding the case. The petitioner has to file a petition under Section 315 of Cr.P.C., to examine himself as a witness. Though sufficient opportunity was given to the petitioner to examine himself as a witness, the petitioner did not come forward to examine himself. The trial Court has observed that the petitioner did not come forward to examine himself as a witness.

4.2.Though the documents mentioned by the petitioner are available with him even at the time of trial, he has failed to file this petition till 2019. Even when the petitioner was questioned under Section 313 of Cr.P.C., he has not elicited any reason for not filing all those documents.

4.3.The trial Court has already dismissed the petition in Crl.M.P.No.10035 of 2014 regarding the filing of documents relating to one Nagarajan. The petitioner filed a revision in Crl.R.C.No.5 of 2015 and the same was also dismissed by this Court. In the complaint against Nagarajan, there is no wordings relating to any amount given by this respondent/complainant. The trial Court has observed that there is no connection between Nagarajan and this case.

4.4.The case of the petitioner at the time of cross examination is that Ex.P6 cheque was given only as a security. Now the petitioner is creating another claim that the cheque was obtained by coercion. There is no mentioning regarding any coercion in Ex.P9. D.W.1 has admitted that for the balance of Rs.50,00,000/-, his father has handed over two unfilled cheque leaves. Already the



respondent/complainant has admitted that the petitioner helped him to purchase lands. Admitted facts need not be proved.

4.5.The documents 6 to 9 are not necessary for the case. In the reply notice Ex.P9, the petitioner has admitted that he has purchased the house in Erode with the fund of the complainant. He has also admitted the purchase of property in the name of D.W.1 Nambi. The petitioner has admitted that he has invested Rs.75,00,000/- with one Natarajan. That amount was not returned back to the complainant. Hence, that amount was equated by the petitioner and his father Venkatachalam. The wife of the petitioner by name Rekka, his brother Radhakrishnan and D.W.1 executed a sale deed for properties worth about Rs.75,00,000/- and cash for Rs.7,00,000/- and for the balance amount, two cheque leaves were issued to the complainant/respondent.

4.6.In Ex.A5, the legal notice, it is stated that during the year 2011, the petitioner received 1,25,00,000/-, and when the complainant/respondent demand the amount, the petitioner repaid only Rs.82,00,000/- and he has to pay a balance of Rs.43,00,000/-. The petitioner has accepted that three sale deeds were executed and Rs.7,00,000/-, cash was given and for the balance cheque dated 09.06.2012 was given by the accused. D.W.1 was examined six years ago. The case was pending from the year 2012 onwards and the petitioner was convicted by the trial Court. Only to fill up the lacuna in the trial, the petitioner has filed this petition. There is no connection between the said Nagarajan and this complainant. Only to repay the amount received, the petitioner has issued the cheque leaves and prayed the petition to be dismissed.

5.After considering both sides, the learned IV Additional District Judge dismissed the petition. Against which, the petitioner has preferred this revision case.

6.On the side of the petitioner, it is stated that the respondent has admitted that on the guidance of the petitioner, the respondent has purchased some properties and the documents which are relating to the property, are relevant to be marked in this case.

7.On the side of the respondent, it is stated that the respondent has admitted that some properties are purchased in the name of the respondent's wife and brother and there is no dispute regarding the purchase of the property and the documents are not relevant to be marked in this case.

8.It is seen that the petition mentioned documents 6 to 11 are regarding the purchase of the property in the name of respondent and his relatives. This transaction was already admitted by the respondent and there is no dispute regarding the purchase of this properties. In those circumstances, there is no necessity to prove



those transaction by filing this documents. Hence, the documents listed 6 to 11 are not necessary for deciding the case.

9.On the side of the petitioner, it is stated that a sum of Rs.71,00,000/- was invested by the respondent on the guidance of the petitioner with one Nagarajan. It is stated that the said Nagarajan committed fraud and the petitioner has lodged a complaint against Nagarajan and a civil case was filed before this Court and is still pending. It is stated that the property of Nagarajan was attached by this Court and the documents 1 to 3 are to be marked.

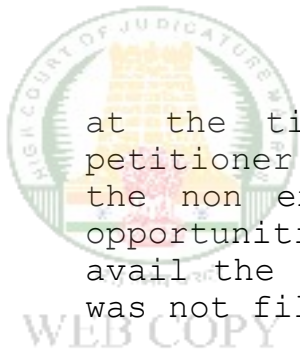
10.On the side of the respondent, it is stated that even in the FIR filed against Nagarajan, there was no statement that the amount was given by the respondent. Already the petitioner has filed a petition before the trial Court for marking certain documents, regarding the transaction with one Nagarajan, that petition in Crl.M.P.No.10035 of 2014 was dismissed by the trial Court and revision in Crl.R.C.No.5 of 2015 of was dismissed by this Court.

11.The copy of the FIR was not filed along with this petition. The case of the petitioner is that there was an agreement between the petitioner and the said Nagarajan. The agreement said to have been entered into between Nagarajan and the petitioner was not attached in the typed set. That agreement was not given in the list of the documents to be filed by the petitioner. When there was no mentioning regarding the respondent in the FIR filed against Nagarajan, there is no necessity to mark the documents listed as 1 to 3. Since the prayer of the petitioner was already dismissed by this Court in Crl.R.C.No.5 of 2015, the petitioner cannot now ask for marking of documents relating to transactions with Nagarajan.

12.The documents 4 and 5 are account statements of the petitioner. The documents 1 and 2 are communications sent by the respondent to the petitioner for fixing a date for the presentation of the cheques. This communication will not be of any use to the petitioner in disproving the case of the complainant.

13.On the side of the petitioner, it is stated that it is the duty of the petitioner to disprove the case of the complainant, since there is a presumption available in favour of the respondent. The right of the petitioner will be affected, if an opportunity for the petitioner to put forth his case is not given.

14.On the side of the respondent, it is stated that all the documents requested to be marked on the side of the petitioner were available with the petitioner even during the pendency of the trial. Most of the documents are of the year 2009 to 2011. The case is pending before the trial Court for a period of six years. The petitioner has not chosen to mark all the document at the time of trial. The petitioner failed to examine himself as a witness. Even



at the time of questioning under Section 391 of Cr.P.C., the petitioner has not come forward to raise any objections regarding the non examination of himself as a witness. Already sufficient opportunities were given to the petitioner. The petitioner failed to avail the opportunities. The petition under Section 315 of Cr.P.C., was not filed by the petitioner before the trial Court.

15.The original case was filed in the year 2013. The criminal appeal was filed in the year 2019. Only after the hearing of oral arguments and only when the matter was posted for filing written arguments, the petitioner has come forward with this petition. This clearly reveals that this is only an attempt to fill up the lacuna. It is seen that this Court in Crl.O.P.(MD)No.15899 of 2019 dated 06.11.2019, has passed an order to dispose of Crl.A.No.62 of 2019 within a period of six weeks from the date of receipt of copy of this order.

16.It is seen that no reason is stated by the petitioner for not marking the documents at the time of trial and for non examination of the petitioner at the time of trial. The petitioner has come forward with this petition at a belated stage only to fill up the lacuna, which cannot be entertained.

17.In the above circumstances, the criminal revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The IV Additional District Judge, Tirunelveli.

+1cc to Mr.G.Aravinthan, Advocate, SR.No.27212.

Crl. R.C. (MD)No.628 of 2020

22.12.2020

KG (CO)

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