

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1069 of 2020

Vinod Joseph

... Petitioner

.Vs.

Kamal Singh Surana

... Respondent

PRAYER : Criminal Revision case filed under Sections 397 r/w 401 or Cr.P.C. against the order passed in Crl.M.P.No.9204/2020 in C.C.No.1040 of 2014 on the file of Metropolitan Magistrate No.III, George Town, Chennai dated 05.10.2020 and subsequently to set aside the same.

For Petitioner : No appearance

For Respondent : No appearance

O R D E R

This Criminal Revision has been filed against the order passed in Crl.M.P.No.9204/2020 in C.C.No.1040 of 2014 on the file of Metropolitan Magistrate No.III, George Town, Chennai dated 05.10.2020 and subsequently to set aside the same.

2. Initially a case has been registered against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act before the learned Metropolitan Magistrate and the same was taken on file in C.C.No.1040 of 2014. During enquiry, after examination of the complainant/respondent's side evidence, the petitioner/accused filed a petition under Section 315 of Cr.P.C. to examine the petitioner/accused to mark a copy of General Power of Attorney xerox document. The said petition was dismissed vide order dated 05.10.2020. Challenging the said order, the petitioner is before this Court by way of this revision.

3. No representation on either side. Perused the records.

4. A careful perusal of the impugned order reveals that during the defense side evidence, the petitioner /accused

filed an application under Section 315 Cr.P.C. to examine the accused as witness, in which he sought permission from the Court to mark xerox copy of the General Power of Attorney. Though he filed xerox copy of the said document with the petition, he was directed to produce original document but he failed to produce the same . Therefore the trial Court dismissed the said petition. Challenging the same, the petitioner filed the present revision.

2. Further, it is seen that after the completion of the respondent/complainant's side evidence, the petitioner/accused was examined as witness on 27.06.2019 and posted for marking of documents on 08.07.2019, but the petitioner has not chosen to mark the documents on his side and therefore the evidence on the side of the petitioner was closed and thereafter the case was posted for examination of witnesses and despite several opportunities being given to the petitioner/accused he has not produced any witnesses and thereafter he filed the petition under Section 315 Cr.P.C. to examine him to mark the copy of the General Power of Attorney. The learned trial Court observed that as per Section 62 of the Indian Evidence Act, the original document can only be marked as primary evidence and since the petitioner failed to produce the original document despite sufficient opportunities being given, rightly dismissed the petition. The petitioner has not satisfied ingredients of Section 65 of Evidence Act to mark the documents as secondary evidence. This Court does not find any perversity, illegality or infirmity in the order passed by the Court below and therefore this Criminal Revision is liable to be dismissed.

3. Accordingly, this Criminal Revision case is dismissed. However, since the C.C.No.1040 of 2014 is pending from 2014, the trial Court is directed to dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, after giving opportunity to the petitioner/accused and if the petitioner/accused produces original Power of Attorney, the same can be marked as evidence and if the petitioner fails to produce the same and still wants to mark the xerox of the same, if he satisfies the ingredients of section 65 of the Evidence Act, the same may be marked as secondary evidence and the admissibility and validity can be decided after trial.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The III Metropolitan Magistrate,
George Town, Chennai.

Cr1.R.C.No.1069 of 2020

MP(CO)
CB(26/02/2021)



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