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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.21810 of 2021

and

CRL.M.P.No.11836 of 2021

A.Jane Sugirthabai ... Petitioner/Defacto Complainant

Vs

State Rep. by
The Inspector of Police
Central Crime Branch,
Chennai.

(Crime No.260 of 2015)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the dismissal order dated 25.10.2021 passed in the petition filed under Section 91 of Cr.P.C vide Crl.M.P.No.19889 of 2021 in C.C.No.6796 of 2016 by the Learned Metropolitan Magistrate, the Special Court for CCB & CBCID cases, Egmore, Chennai and set aside the same.

For Petitioner : Mr.P.Rajkumar Pandian

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the dismissal order dated 25.10.2021 passed in Crl.M.P.No.19889 of 2021 in C.C.No.6796 of 2016 by the Learned Metropolitan Magistrate, the Special Court for CCB & CBCID cases, Egmore, Chennai.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The petitioner herein, who is the defacto complainant, had lodged a complaint, which was registered in Crime No.260 of 2015 for the offences under Section 406, 423, 420 r/w Section 34 of the IPC. On completion of the investigation, a charge sheet has been filed in C.C.No.6796 of 2016, which is now pending trial before the learned Metropolitan Magistrate, CCB & CBCID cases, Egmore, Chennai.



4. The grievance of the petitioner is that in this case, the prosecution had examined PW1 to PW8 and thereafter the proceedings under Section 313(1)(b) were completed. A1, in this case, had entered into the box and examined himself as DW1 and he had marked Exhibits D1 to D5 to prove the fact that a Civil Suit is pending between the petitioner and the accused in O.S.Nos.6732 of 2009 and 7473 of 2009 before the VII Assistant City Civil Court, Chennai, in which the petitioner had filed a written statement admitting the conveyance of the property to the accused on receipt of a sale consideration. The said exhibits are extracted hereunder:-

i) Ex.D.1 Vakalat filed by Jane Sugirtha Bai & Agoliab Samuel in (defendants 1 & 2) in O.S.No.7473/2009 on the file of VII Assistant City Civil Court, Chennai.

ii) Ex.D.2 Written Statement filed by Agoliab Samuel (2nd Defendant) in O.S.No.7473/2009 on the file of VII Assistant City Civil Court, Chennai.

iii) Ex.D.3 Memo filed by Jane Sugirthabai and Agoliab Samuel in I.A.15469/2009 in O.S.No.7473/2009 on the file of VII Assistant City Civil Court, Chennai.

iv) Ex.D.4 Memo of appearance filed by Jane Sugirthabai (to adopt the Written Statement of Agoliab Samuel 2nd Defendant) in O.S.No.7473/2009 on the file of VII Assistant City Civil Court, Chennai.

v) Ex.D.5 Common Judgment in O.S.No.7473/2009 & O.S.No.6732/2009 on the file of VII Assistant City Civil Court, Chennai.

5. The grievance of the petitioner is that the vakalat and the memo/written statement were not filed by the petitioner and the accused have forged the signatures of the petitioner and her husband by making a false representation before the Civil Court. Further, for the purpose of proving the forgery, the original documents have to be perused, which was not done in this case. It is also stated that only the certified copy of the document has been produced, by which the forgery of the petitioner's signature cannot be proved. Subsequently, the prosecution had filed a petition under Section 91 of Cr.P.C before the Lower Court calling for the original documents. The Lower Court, having found that the petition has been filed at a belated stage and it would preclude the proceedings, had dismissed the petition, which would cause great injustice and prejudice to the petitioner. The Trial Court, after dismissing the Section 91 petition on 25.10.2021, had posted the case for arguments on 15.11.2021 and thereafter, the matter came on 18.11.2021. At this juncture, the petitioner, finding that the prosecution had not filed any petition against the dismissal of Section 91 petition, had filed the present petition.

6. The learned counsel for the petitioner submitted that the case is now posted on 26.11.2021 and hence, he prays that



unless these five documents, which are already available in the Registry of City Civil Court, is produced for proving the forgery committed by the accused, serious prejudice would be caused to the petitioner.

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7. This Court finds that summoning and production of original documents might take some time, since the suits in O.S.Nos.6732 of 2009 and 7473 of 2009 have been disposed of on 03.11.2010 itself, but that does not mean that the right of the accused as the defacto complainant cannot be denied. The delay in production of documents would only be beneficial to arrive a just decision. Hence, this Court is of the view that a time limit shall be fixed for summoning the documents, which are available in the Registry of the Civil Court.

8. In the light of the above observation, this Court set asides the order dated 25.10.2021 passed in Crl.M.P.No.19889 of 2021 in C.C.No.6796 of 2016 and directs the Registry of the City Civil Court to produce the original documents i.e., Exhibits D1 - D5, before the Trial Court and thereafter mark the documents and if required forward the same to the Forensic Expert. Further, after receiving the original documents from the Registry and the report of the Forensic Expert, the Trial Court shall conclude the proceedings. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

9. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ata/hvk

To

1. The Metropolitan Magistrate,
Special Court for CCB & CBCID cases,
Egmore, Chennai.

2. -do-through The Chief Metropolitan Magistrate,
Egmore, Chennai.

3. The Registrar,
VII Asst. City Civil Court,
Chennai.



4.The Inspector of Police
Central Crime Branch,
Chennai.

5.The Director,
Forensic Department,
Chennai.

6.The Public Prosecutor,
High Court, Chennai-104.

CRL.O.P.No.21810 of 2021
and
CRL.M.P.No.11836 of 2021

CA (CO)
PR (15/12/2021)