

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.403 of 2017
and
Crl.MP.No.297 of 2017

Nisar Ahmed

...Petitioner

.Vs.

Mrs.S.Leela

....Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the learned Principal District Munsif at Alandur to take the complaint on file, filed by the petitioner in S.R.No.3175 dated 24.03.2016 in O.S.No.809 of 2007 c/w O.S.No.820 of 2008 filed under Section 340 r/w section 195 of Cr.P.C., for the offences committed by the respondent and other for offence of conspiracy, forgery using forged documents, and cheating which is punishable under Section 120(B), 467, 468, 471 and 420 of IPC in accordance with law.

For Petitioners : Mr.Babu Muthu Meeran
For Respondent : Mr.B.Vijay

सतयमेव जयते
O R D E R

This criminal original petition has been filed for a direction to the Court below to entertain the complaint filed by the petitioner under Section 340 r/w Section 195 of Cr.P.C., on the ground that the respondent has filed three documents which according to the petitioner are forged documents and it has been produced during the course of proceedings by marking those documents.

2.It is seen from records that the civil suits are pending before the Court below from the year 2007 and 2008 respectively. The Court below on receipt of the petition filed by the petitioner has returned the same on the ground of maintainability. Aggrieved by the same, the present petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that the Court below went wrong in relying upon the reported judgment of this Court without properly appreciating the facts that were projected in the application. The learned further submitted that where a fraud is played before the Court on the strength of forged documents, a complaint is maintainable under Section 340 r/w Section 195(1)(b) of Cr.P.C. The learned counsel therefore urged that the court below should be directed to consider the application filed by the petitioner and pass orders in accordance with law.

4.Per contra, the learned counsel appearing on behalf of the respondent questioned the maintainability of this petition filed under Section 482 of Cr.P.C. The learned counsel submitted that admittedly an application has been filed in a civil suit and if really the petitioner is aggrieved by the application not being entertained by the Court below, the appropriate remedy would be only to file a CRP and not a petition under Section 482 of Cr.P.C. Without prejudice to the contentions putforth with regard to the maintainability of this petition, the learned counsel further submitted that the documents in question has already been marked before the Court below and there is an issue pertaining to the genuineness of the documents which will be decided by the Court below and the case was at the stage of pronouncing judgment. At this stage, the petitioner filed an application and approached this Court and by virtue of the interim orders granted by this Court, the suit is kept pending at the stage of pronouncing of judgment for the last four years. The learned counsel therefore submitted that the finding of the Court below on the genuineness of the documents will have a direct bearing on the application that has been moved by the petitioner and therefore the petitioner has to necessarily wait for the pronouncement of the final judgment and thereafter file the application if it so warrants.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The petitioner has moved an application before the Court below for initiating action against the respondent under Section 340 of Cr.P.C., r/w Section 195(1)(b) of Cr.P.C., on the ground that certain documents which were marked during the course of trial are forged documents. The genuineness or otherwise of the documents that were marked before the Court below is a subject matter of appreciation of evidence. The Court below in fact will consider the genuineness of the documents as one of the issue at the time of pronouncing the judgment. Even before pronouncing the judgment, the petitioner cannot file an application and request the Court

below to initiate action under Section 340 of Cr.P.C. The application filed by the petitioner is clearly premature. It will all depend upon the finding of the Court below and only thereafter, the petitioner can move any such application depending upon the finding given by the Court below on the genuineness of the documents.

7.The Court below ought to have kept the application pending till the judgment is delivered in the suits. There was no requirement for the Court below to return the application by making an endorsement.

8.It is true that the petitioner could not have maintained a petition under Section 482 of Cr.P.C., before this Court on the rejection of the application filed in a civil suit. However, at this length of time, this Court does not want to delay the proceedings before the Court below any further and this Court will deal with this petition under Article 227 of the Constitution of India.

9.In view of the above, there shall be a direction to the Principal District Munsif, Alandur, to hear the final arguments of the petitioner and the respondent in O.S.No.809/2007 and O.S.No.820 of 2008 and deliver the judgment within a period of four weeks from the date of receipt of copy of this order. The application filed by the petitioner shall be kept in abeyance. Subsequent to delivering the judgment, if the situation so warrants, based on the findings of the Court below on the genuineness of the documents, the petitioner can always revive the application. The Court below shall independently deal with the suits on its own merits and in accordance with law, without being influenced by the order passed in this petition.

10.This criminal original petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

KP
To
The Principal District Munsif,
Alandur.

+1cc to Mr.B.Vijay , Advocate SR.No. 3301