



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.85 of 2021

and

Crl.M.P.(MD)No.1072 of 2021

Santhi

... Petitioner/Petitioner/Accused

Vs.

Arockiyamary

.. Respondent/Respondent/Complainant

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the order dated 21.11.2020 passed in Cr.M.P.No.327 of 2020 in C.C.No.84 of 2017 on the file of the learned Judicial Magistrate/Fast Track Court, at Magisterial Level, Thanjavur and to set aside the same.

For Petitioner

: Mr.R.P.Ramachanthiran

For Respondents

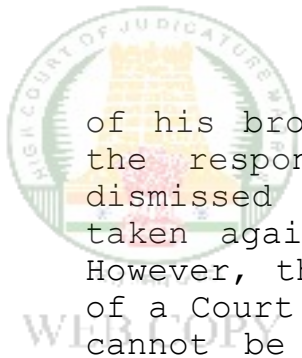
: Mr.V.Balaji

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.327 of 2020 dated 21.11.2020, on the file of the learned Judicial Magistrate/Fast Track Court, Thanjavur.

2.The revision petitioner has filed a petition in Cr.M.P.No.327 of 2020 before the trial Court under Section 243(2) of Cr.P.C., for production of the documents. That petition was dismissed by the learned Judicial Magistrate/Fast Track Court, Thanjavur. Against the same, the petitioner preferred this Criminal Revision Case.

3.On the side of the petitioner, it is stated that the respondent is the complainant in the case in C.C.No.84 of 2017. At the time of cross examination, the respondent admitted that he is ready to submit the I.T. Reports. The respondent has not lend any amount to the petitioner on 15.04.2017. At that time, the respondent was not wealthy enough to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as a loan to the petitioner. To prove the case, the petitioner has filed a petition before the lower Court. Demand the respondent to file I.T. Reports from the year 2014 - 2018. The respondent has stated that he has given the amount before the death



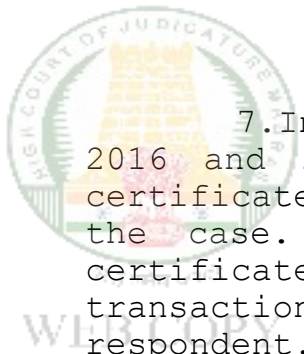
of his brother and hence, the death certificate of the brother of the respondent has also to be produced. The trial Court has dismissed the petition stating that an adverse inference can be taken against the respondent for non production of the document. However, the adverse inference can be taken only for non compliance of a Court order. Without production of documents, adverse inference cannot be taken against the respondent. It is the duty of the petitioner to rebut the case of the respondent and prayed the petition to be allowed.

4.The learned counsel for the petitioner would rely upon the judgment passed by thsi Court in the case of M.R.Jayakumar v. S.Senthil reported in CDJ 2019 MHC 3772, wherein it is stated as follows:

'In the result, this Criminal Original Petition is allowed and the order passed by the Court below in C.M.P.No.176 of 2015 is hereby set aside. The respondent is directed to produce the documents sought for by the petitioner before the trial Court within a period of two weeks from the date of receipt of copy of this order. If the respondent is not possession of those documents or is not willing to produce those documents, he may take a specific stand to that effect before the trial Court and it is thereupon left to the trial Court to decide the issue in accordance with law at the time of appreciation of evidence. The trial Court is directed to complete the proceedings in C.C.No.177 of 2013 within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.'

5.On the side of the respondent, it is stated that under Section 243(2) of Cr.P.C., the accused cannot compel the complainant to produce a document. Only after the completion of the evidence, the petitioner has choosen to file this petition. The motive of the petitioner is only to delay the proceedings. If the motive is delay, the Magistrate is at liberty to dismiss the petition. On the side of the respondent, it is stated that I.T. Report will contain total transactions for the year and there is no possibility of the particular loan to have taken place in the I.T. Report and prayed the petition to be dismissed.

6.The prayer in the petition in Cr.M.P.No.327 of 2020 is for the production of I.T. Reports and for the production of the death certificate of the brother of the respondent. It is seen that the cheque is dated 09.08.2017 and the date of withdrawal is dated 15.04.2017.



7. In the above circumstances, I.T. Reports for the year 2014-2016 and 2017 - 2018 are not relevant to the case. The death certificate of the brother of the respondent is not a main issue in the case. There is no need for the production of the death certificate. There may not be particular entries regarding the loan transaction but the I.T report may prove the capacity of the respondent. Hence, the respondent is hereby directed to produce the I.T. Report pertaining to the year 2016 - 2017.

8. In view of the above, this Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petition is closed

Sd/-

Assistant Registrar (W)

// 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 Judicial Magistrate, Fast Track Court, Thanjavur.

+1 CC to Mr.R.P.RAMACHANTHRAN, Advocate (SR-11447[F] dated 16/03/2021)

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