



CrI.O.P.No.13034 of 2021

WEB COPY **R.N.MANJULA, J**

The above petition has been brought before this court by way of "For Clarification" at the instance of the learned counsel for the petitioner.

2.The learned counsel for the petitioner submitted that this Court vide order dated 15.11.2022 has permitted the petitioner to produce the said documents alone viz Serial Nos.2, 6, 11 & 13 before the Trial Court subject to its relevancy. He further submitted that the proceedings are pending in the First Appellate Court and hence, it should be clarified whether the documents are to be produced before the Trail Court or the First Appellate Court. Now it is clarified that the word Trial Court is a clerical error and it should be the First Appellate Court.

3. On the said submission of the learned counsel for the petitioner is heard and clarified.

4. The Registry is to amend the paragraph Nos.6 & 7 of the order dated 15.11.2022 made in CrI.O.P.No.13034 of 2021 and substitute the following:-

"6. It is seen that the petitioner had wanted to submit 13 documents as additional evidence. During the course of arguments, the learned counsel for the petitioner restricted his submission only with regard to four documents viz., Serial Nos.2,6,11 & 13 alone. For the offence under Negotiable Instruments Act, the



complainant gets the benefit of initial presumption in his favour. So the respondent has got the reverse burden to rebut the initial presumption. Though it would have been helped the petitioner, had he attempted to produce all these documents before the Trial Court, he might not have advised to do so. It is submitted that on seeing the judgment of the learned Trial Judge, he realized that these documents would have served his defence better. So it cannot be taken that the petitioner had attempted to produce the additional evidence just to fill up the *lacunae*. Since the petitioner is not the author of the documents in Serial Nos.2,6,11 & 13, I feel it is appropriate to allow him to produce the said documents alone before the **First Appellate Court** subject to its relevancy.

7. In the result, this Criminal Original Petition is allowed and the order passed by VI Additional Sessions Court, Chennai, in CrI.M.P.No.472 of 2021 in CrI.Appeal No.443 of 2019 dated 15.04.2021, is set aside and modified to the effect that the petitioner shall be allowed to produce the said documents alone *viz.*, Serial Nos.2,6,11 & 13, before the **First Appellate Court** subject to its relevancy."



5. Issue fresh order copy.

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01.08.2023

jrs



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R.N.MANJULA.J,
jrs

Crl.O.P.No.13034/2021

01.08.2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.13034 of 2021

Mr.Abdul Rahim ... Petitioner

Vs.

Mr.Shahul Hameed ... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 15.04.2021 passed by VI Additional Sessions Court, Chennai, in CrI.M.P.No.472 of 2021 in CrI.Appeal No.443 of 2019 on the file of the above Court and consequently, direct the lower appellate Court to permit the petitioner/appellant to adduce further evidences on the defence side along with relevant documents already filed thereon and to decide the appeal.

For Petitioner ... Mr.K.M.Subramanian

For Respondent ... Mr.A.R.Suresh



ORDER

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This Criminal Original Petition has been filed to set aside the order dated 15.04.2021 passed by VI Additional Sessions Court, Chennai, in Crl.M.P.No.472 of 2021 in Crl.Appeal No.443 of 2019 on the file of the above Court and consequently, direct the lower appellate Court to permit the petitioner/appellant to adduce further evidences on the defence side along with relevant documents already filed thereon and to decide the appeal.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the appellant who had filed a Criminal Appeal in Crl.A.No.443 of 2019 challenging the order dated 02.12.2019 in C.C.No.2080 of 2016. During the pendency of the appeal, the petitioner had filed a Miscellaneous Petition in Crl.M.P.No.472 of 2021 under Section 391 of Cr.P.C. for seeking permission to adduce additional evidence and the said petition was dismissed. Aggrieved over that, this Criminal Original Petition



has been filed.

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4. The learned counsel for the petitioner submitted that the respondent complainant has filed a private complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act; since the petitioner being the accused has got no other option except to furnish the additional documents in order to establish his defence. He further submitted that at the time of trial, the documents were not produced because the necessity did not arise; only after seeing the judgment of the Trial Judge, the petitioner felt that the production of these documents would have a better bearing on the case.

5. The learned counsel for the respondent submitted that the petitioner attempts to file these documents just to fill up the *lacunae*; the learned Trial Judge has rightly dismissed the petition filed by the petitioner seeking permission for adducing additional documents.

6. It is seen that the petitioner had wanted to submit 13 documents as



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additional evidence. During the course of arguments, the learned counsel for the petitioner restricted his submission only with regard to four documents viz., Serial Nos.2,6,11 & 13 alone. For the offence under Negotiable Instruments Act, the complainant gets the benefit of initial presumption in his favour. So the respondent has got the reverse burden to rebut the initial presumption. Though it would have been helped the petitioner, had he attempted to produce all these documents before the Trial Court, he might not have advised to do so. It is submitted that on seeing the judgment of the learned Trial Judge, he realized that these documents would have served his defence better. So it cannot be taken that the petitioner had attempted to produce the additional evidence just to fill up the *lacunae*. Since the petitioner is not the author of the documents in Serial Nos.2,6,11 & 13, I feel it is appropriate to allow him to produce the said documents alone before the Trial Court subject to its relevancy.

7. In the result, this Criminal Original Petition is allowed and the order passed by VI Additional Sessions Court, Chennai, in CrI.M.P.No.472 of 2021 in CrI.Appeal No.443 of 2019 dated 15.04.2021, is set aside and



modified to the effect that the petitioner shall be allowed to produce the said documents alone viz., Serial Nos.2,6,11 & 13, before the Trial Court subject to its relevancy.

15.11.2022

Index: Yes/No
Internet: Yes/No
gsk

To

1 VI Additional Sessions Court,
Chennai.

2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

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CrI.O.P.No.13034 of 2021

15.11.2022