



Crl.O.P.No.25405 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.25405 of 2021 and
Crl.M.P.No.14080 of 2021

S.Ravikumar

...Petitioner

Vs.

R.Vivekananda

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.11502 of 2021 in C.A.No.364 of 2019, dated 22.11.2021 pending on the file of the learned V Additional Sessions Judge, Chennai.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : No appearance

ORDER

This Criminal Original Petition is filed to set aside the order passed in Crl.M.P.No.11502 of 2021 in C.A.No.364 of 2019, dated 22.11.2021 pending on the file of the learned V Additional Sessions Judge, Chennai.



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2. On the complaint given by the respondent, a case has been registered under Section 138 of N.I.Act in C.C.No.3567 of 2012. After the conclusion of trial, the learned Metropolitan magisterial, FTC-II, Egmore, Chennai convicted the petitioner. The petitioner preferred an appeal before the learned V Additional Sessions Judge, Chennai, by challenging the conviction. During the pendency of the appeal, the petitioner has filed a petition in Crl.M.P.No.11502 of 2021 to receive the following documents as additional evidence:

1. Book of accounts
2. Letter issued by the Plaza Maintenance and Services Limited
3. RTI Certificate obtained from Punjab National Bank dated 28.09.2020

But the said petition was dismissed. Aggrieved over the said order, the present Criminal Original Petition has been preferred by the petitioner.

3. Heard the learned counsel for the petitioner. Despite service of notice, the respondent has not appeared either in person or through counsel.



4. The learned counsel for the petitioner submitted that the respondent/complainant was working under the petitioner at his shop in Spencer Plaza and during that time, he had taken away the cheque and used it later for the purpose of this case; the additional documents sought to be produced are relevant to disprove the case of the complainant.

5. In the impugned order of the learned first appellate Judge, it is observed that the first document viz., the Books of Accounts are xerox copies. However, it is stated that the petitioner has got the originals and he is always ready to produce the same before the Court. Without considering the documents, the learned appellate Judge has stated that the books of accounts would not in any way prove the association between the petitioner and the respondent or that the respondent had stealthily taken away cheques. Document No.2 is a letter issued by the Plaza Maintenance and Services Limited. It is observed in the impugned order that it is also a xerox copy and as per this document, the respondent had signed for the opposite shops in Serial No.147 Shop No.S18G, Day & Day and that also will not be helpful for the petitioner. The learned counsel for the petitioner submitted



that the petitioner will produce the originals of document in S.No.2 also.

Insofar as the 3rd document is concerned, it is an information gathered from the Punjab National Bank through RTI Application with regard to the disputed cheques filed in the present case i.e., 658902 and 658903. The learned appellate Judge has observed that Exhibits P2,P3, P6 and P7 would show that the cheques have been presented and they have been returned and hence the document No.3 is also not necessary.

6. Though it is appropriate for the learned trial Judge to record his observation with regard to document No.3, taking into account of the related documents already produced on record, the other documents in S.Nos.1 and 2 could have been received. After hearing the submission of the appellant about those documents, this Court appreciate its evidentiary value. Since the petitioner who is the accused has got reverse burden to prove his innocence in view of the initial presumption that would arise in favour of the complainant for the offence under Section 138 of Negotiable Instruments Act, I feel it is appropriate to allow the petitioner to produce the documents in S.Nos.1 and 2 alone.



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7. Thus, the Criminal Original Petition is allowed and the order of the learned V Additional Sessions Judge, Chennai in Crl.M.P.No.11502 of 2021 in CA No,364 of 2019 is set aside and it is partly allowed for receiving the documents in S.Nos.1 and 2 alone. Consequently, connected miscellaneous petition is closed.

16.11.2022

vum

Index:yes/No

Speaking order / Non speaking order



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