



Crl.RC No.193 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.193 of 2021 and
Crl.M.P.No.4664 of 2021

Sri. Property Makers rep. by its Power Agent,
Mr.P.G.S.Saravanakumar, s/o G.Selvaraj,
Division 50/F-1, Plot No.1,
Sarveshwari Nagar, Oorapakkam 603 302.

... Petitioner

Vs.

Senthilkumar

... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 Cr.P.C. to set aside the order dated 09.02.2021 passed by the VI Additional Sessions Judge, Chennai in Crl.M.P.No.5760 of 2020 in C.A.No.235 of 2019.

For Petitioner : Mr.T.Arokiadoss

For Respondent : Notice served, no appearance.



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ORDER

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This Criminal Revision Case has been filed to set aside the order dated 09.02.2021 passed by the VI Additional Sessions Judge, Chennai in Crl.M.P.No.5760 of 2020 in C.A.No.235 of 2019.

2. The case of the petitioner in brief is as follows.

The petitioner herein is A4 in C.C.No.7249 of 2014 on the file of the learned Metropolitan Magistrate Court, Fast Track Court No.II, Egmore, Allikulam, Chennai. The respondent herein, filed the above complaint against four persons, viz., 1. M/s Best Properties Pvt. Ltd. by its share holders, 2. M.Ashok Kumar, 3. D.Balamurugan and 4. Sri Property Makers, by its representative D.Saravanakumar, under Section 138 of Negotiable Instruments Act seeking compensation of Rs.60,00,000/- towards twice of cheque amount. The learned Magistrate, after perusing the oral and documentary evidence, acquitted A1 to A3 from the offence under Section 138 of Negotiable Instruments Act and convicted the petitioner/A4 for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a sum of



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Rs.60,00,000/- as compensation , in default, to undergo 3 months simple imprisonment. Challenging the above judgment of conviction, the petitioner preferred an appeal in C.A.No. 235 of 2019 before the VI Additional Sessions Judge, Chennai. Pending Appeal, the petitioner filed a petition in Crl.M.P. No.5760/2020 to mark additional documents and it was dismissed, by the lower Appellate Court, vide order dated 09.02.2021. Aggrieved by the order of dismissal, the present Criminal Revision Case has been filed.

3. The learned counsel for the petitioner submitted that the counsel, who was engaged by the petitioner to appear before the Trial Court, has not properly defended the case, despite the petitioner/accused handed over entire materials and documents to defend the case. He further submitted that the sale deeds dated 17.10.2013, 23.12.2013 and the General Power of Attorney dated 09.06.2014, which were sought to be received as additional documents before the Trial Court, are the crucial and essential documents to arrive a proper conclusion and hence, the petitioner filed a petition to receive the above documents as additional documents. But the lower Appellate



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Court, has not considered the fact that the documents will not introduce any new fact or change the nature of case and they were filed only to clarify the existing facts. He also submitted that the above sale deeds and the General Power of Attorney were executed in favour of the complainant/respondent, towards the satisfaction of the liabilities of the accused. The learned counsel further submitted that the respondent/complainant admitted the execution of the above said sale deeds and the Power of Attorney infavour of him, during his cross examination. Therefore, the petitioner /accused neither attempted to fill-up the lacuna, nor invented any new case. However, without considering the above aspects, the Lower Appellate Court has erred in dismissing the petition. Hence, the order may be set aside.

4. Despite notice has been served, no representation for the respondent and none appeared on behalf of them.

5. Heard the learned counsel for the petitioner and I have perused the materials on record.



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6. It is the case of the respondent/complainant in C.C.No.7249 of 2014 that the respondent/complainant entered into an agreement with A1 to A3 on 01.04.2012 to develop the lands comprised in S.No.17 to 23, 132, 133, 135, 136 situated at Rantham Korattur Village, Arani Taluk, Thiruvannamalai District; and also 100 Acres of land in S.No.267, 268, 283, 376, 377, 378 situated at Senganavaram Village, Arcot Talukm, Vellore District and also to layout the above lands into 1000 plots. For that developing work, the respondent/complainant financed a sum of Rs.25,00,000/- to them. It is agreed by A1 to A3 that for repayment of the above said Rs.25,00,000/-, they agreed to pay a sum of Rs.2,500/- on sale of each and every plot. Thereafter, the petitioner herein/A4 had taken over the above promoting work from A1 to A3 and promised the petitioner to complete the above work by the end of December 2013 and also to pay the amount as agreed by A1 to A3. Further, to discharge the above amount, he gave a cheque bearing No.000141 dated 23.12.2013 drawn on Karur Vysya Bank, Arumbakkam Branch infavour of the respondent/complainant and it was dishonored. Hence, the complaint was filed.



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7. According to the petitioner/accused, the sale deeds dated 17.10.2013, 23.12.2013 and the General Power of Attorney dated 09.06.2014 were executed in favour of the respondent/complainant for repayment of the amount to be paid by him. The Trial Court, in its judgment at paragraph No.18, has observed that the accused has not filed any proof to support his defence that in order to repay the amount, he executed sale deeds in favour of the respondent/complainant and finally found the petitioner/accused guilty of the offence under Section 138 of Negotiable Instruments Act and sentenced him, as stated above. Therefore, the petitioner/accused preferred an Appeal in Crl.A.No. 235/2020 and pending appeal filed a petition in Crl.M.P.No.5760/2020 to receive the above said sale deeds and power attorney as additional documents, to substantiate his defence. But that petition was dismissed by the lower appellate Court holding that the documents were not filed before the Trial Court, though the petitioner has ample opportunities to file the same. The petitioner in the affidavit clearly stated that since the respondent/complainant himself admitted during his cross examination about the execution of sale deeds, he filed the above documents to support his defence. Further, it is the contention of the petitioner that,



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though he handed over all material documents to his counsel to defend the case before the Trial Court, he has not properly defended the case and not filed the above documents. In such circumstances, this Court is of the view that, even though the petitioner failed to file documentary evidence to prove his specific defence before the Trial Court, the documents sought to be marked as additional documents before the lower appellate court, cannot be rejected, without assigning any valid reasons. Therefore, the impugned order passed by the lower Appellate Court is unsustainable and it warrants interference by this Court.

8. Accordingly, the impugned order passed by the lower Appellate Court in Crl.M.P.No.5760/2020 in C.A.No.235/2019 dated 09.02.2021 is set aside. The VI Additional Sessions Judge, Chennai is directed to receive the documents produced by the petitioner/accused and marked the same as exhibits. Further, the learned Judge is directed to dispose the Case in C.A.No.235 of 2019 on merits, within three months from the date of receipt of a copy of this order, after affording opportunities to both the parties.



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9. With the above directions, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Internet:Yes/No
mst

To

1. The VI Additional Sessions Judge, Chennai.
- 2.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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