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Crl.O.P.No.15642 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15642 of 2023

D.Chandramohan
S/o.Devaraj

... Petitioner

Vs.

G.Dhamodarasamy
S/o.Gopalsamy Naidu

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and set aside the order dated 02.05.2023 passed by learned Judicial Magistrate I, Udumalpet, in Crl.M.P.No.796 of 2022.

For Petitioner : Mr.N.K.Arul Muruganandham

For Respondent : Mr.B.Gopalakrishnan

ORDER

This Criminal Original Petition has been filed challenging the order passed by learned Judicial Magistrate I, Udumalpet, in Crl.M.P.No.796 of 2022 in C.C.No.261 of 2013, dated 02.05.2023 dismissing the application filed u/s.91 Cr.P.C, wherein the petitioner had sought for issuing summons to the Sub-Registrar, Udumalpet, to produce the thumb impression and signature register maintained pertaining to document



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Nos.54 of 2011 and 1870 of 2011.

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2. The respondent has filed a complaint against the petitioner for offence u/s.138 of the Negotiable Instruments Act. The petitioner has taken a specific defence that the transaction was done only with one Jothimani and that the petitioner never had any transaction with the respondent and to substantiate the same, Ex.D7 was also marked. During the cross-examination of DW-1, suggestions were put on the side of the respondent/complainant disputing the very signature and thumb impression found in Ex.D7. In view of the same, the petitioner wanted the signature and thumb impression found in Ex.D7 to be compared with the admitted documents Ex.D5 and Ex.D6 to substantiate his defence. The Court below has rejected the application filed by the petitioner and aggrieved by the same, the present Criminal Original Petition has been filed before this Court.

3. Heard Mr.N.K.Arul Muruganandham, learned counsel for petitioner and Mr.B.Gopalakrishnan, learned counsel for respondent.

4. The entire grievance of the petitioner revolves around his claim



that the transaction was only with Jothimani and not with the petitioner.

To substantiate the same, Ex.D7 was also marked. Since the respondent/complainant has questioned the very genuineness of the thumb impression and signature found in Ex.D7, the petitioner wants to rebut the same by getting an expert opinion by comparing the signature and thumb impression found in Ex.D7 and the sale deeds that were executed by the said Jothimani in the year 2011, which contained his signature and thumb impression. Since the said Jothimani died and the petitioner is not in a position to get the original sale deeds, the petitioner has sought for issuing summons to the Sub-Registrar, Udumalpet, to furnish the thumb impression and the signature register that was maintained while registering the documents executed by the said Jothimani.

5. The petitioner/accused has to rebut a legal presumption u/s.139 of the Negotiable Instruments Act. In view of the specific defence taken by the petitioner, he has to necessarily establish that the signature and thumb impression found in Ex.D7 is that of Jothimani. In view of the same, an opportunity must be given to the petitioner to establish that defence.

N.ANAND VENKATESH, J



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In the light of the above discussion, the order passed by learned Judicial Magistrate I, Udumalpet, in Crl.M.P.No.796 of 2022 in C.C.No.261 of 2013, dated 02.05.2023, is hereby set aside. The Court below shall proceed further to issue summons to the concerned Sub-Registrar and the expert opinion shall be sought for. In any event, the proceedings in C.C.No.261 of 2013 shall be completed within a period of four (4) months from the date of receipt of a copy of this order and a compliance report shall be filed before this Court.

22.08.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

The Judicial Magistrate I,
Udumalpet.

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