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Crl.O.P.No.20868 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.20868 of 2022

and

Crl.M.P.No.13651 of 2022

N.Syamasundara Naidu

... Petitioner

Vs.

1.V.Dakshinamoorthy

2.B.H.Himagiribabu

3.State rep.by
The Inspector of Police,
D.C.B. (ALGSC) Vellore.
Crime No.10/2014.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order dated 01.09.2021 passed by the learned Judicial Magistrate No.II, Vellore in Crl.M.P.No.6306/2021 in C.C.No.10 of 2016.

For Petitioner : Mr.N.Pawan Kumar

For R3 : Mr.S.Udayakumar
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C., by the defacto complainant being aggrieved by the order passed by the trial Court under Section 91 Cr.P.C.

2. The short point involved in this matter is that, the defacto complainant, who has lodged the complaint against the respondents 1 and 2 for conspiracy, cheating and forgery etc., had an impression that the prosecution is not proceeding with the trial fairly. By invoking Section 302 Cr.P.C., sought the permission of the Court to assist the prosecution, but that was denied by the trial Court, later on, order of the trial Court was set aside by the High Court, to replace the prosecution which was declined. On appeal, the High Court interfered and permitted the defacto complainant to appoint a private counsel to assist the prosecution. In such circumstances, the petition under Section 91 Cr.P.C., was filed to summon the disputed document and the opinion given by the expert which are the documents marked in the Suit initiated by the accused persons.

3. The said Suit was decreed ex-parte. Challenging that, the defacto



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complainant has filed a petition to set aside the ex-parte decree with condonation petition. His attempt was unsuccessful, hence it is reported that CMA is pending against the order dismissing the petition filed under Order IX Rule 13 CPC., decline to entertain the application under Section 91 Cr.P.C., is impugned in this petition.

4. The grievance of the petitioner now is that his 91 Cr.P.C., petition to summon the original of the disputed document and the opinion given by the expert was not allowed by the trial Court and the reasoning of the trial Court decline to entertain the application under Section 91 of Cr.P.C., is impugned in this petition.

5. It is pertinent to note that this matter was listed for the past three days. The learned counsel for the petitioner, yesterday and day before yesterday appeared through video conference, but his system was not working properly and his voice was not audible. Therefore, this Court was not able to pass any order on those two days. Today it is listed and the learned counsel was present. After hearing the counsel at length and when the Court was about to dictate the judgment, the petitioner repeatedly disturbing the pronouncement of judgment



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and not allow this Court to complete the pronouncement of order. Despite that, this Court after a brief interference by the petitioner counsel, continue the order as below:

6. According to the learned counsel appearing for the petitioner, the proceedings of criminal Court will prevail over the civil proceedings, the documents which is subject matter of alleged forgery has to be independently tested in a criminal proceedings and therefore, dehors of the opinion of the handwriting expert in the civil proceedings in respect of the disputed documents and the same has to be summoned and subjected to test.

7. Further the learned counsel for the petitioner also submitted that the Hon'ble Supreme Court had repeatedly held that the documents which is essential to prove guilt of a person or otherwise has to be properly tested and the procedural mechanism to arrive at just decision must be encouraged.

8. The learned counsel appearing for the accused submitted that the examination of the witnesses including Investigating Officer almost completed but the defacto complainant had filed application for recall of witnesses. The



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counsel for the petitioner responded stating that the defacto complainant approached the Hon'ble High Court for alter or include certain charges and same has been allowed and the matter stands at that stage.

9. Be that as it may. As far as the issue now involved is regarding whether the disputed documents which is a subject matter in a civil Suit have validity in a criminal proceedings or to be once again put to test for an expert opinion and for that purpose the original document should be marked and part of the Court record in a civil proceedings is to be summoned.

10. The learned counsel appearing for the accused submitted that the certified copy of the document which is summoned and marked here is suffice for arriving at conclusion and the disputed document need not be subjected to multiple examination and expert opinion which at the most has no binding effect but only a suggestive nature for the Court to arrive at just conclusion. Expert opinion are not conclusive proof.

11. The perusal of the impugned order and the records indicates that the disputed document is in the custody of the Court in a civil proceedings and the document already been sent for expert opinion and one Mr.Alagesan, Deputy Director and document expert attached to SFL had given his opinion



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about the signatures after comparing the disputed signature found in the document with the admitted signatures. In the said circumstances, the present application under Section 91 of Cr.P.C., and rejection of the request by the trial Court with reasoning does not require any interference. For appreciation of the facts to prove the charges there is material for the trial Court namely the opinion of the expert and the certified copy of the disputed document. If at all the Court needs any further clarification, the original document which is already in the custody of the Court may be marked as Exhibit. The trial Judge has every right to call for the records and comparing it on her own or sent for another expert opinion and decide the matter since the act provides for such procedures. As of now, the trial Judge has rightly observed that the request of the petitioner to call for those documents are not necessary and the certified copy already been filed. In so far as the allegations about the manipulation of the Advocate Commissioner report is part of civil proceedings.

12. The trial Court in C.C.No.10 of 2016 is not testing the genuiness of the Commissioner's report submitted in the civil Court proceedings. If at all there is any manipulation of Commissioner's report, it is for the petitioner herein to agitate it before the civil Court and not in the criminal Court where



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the accused are tried for fabrication of unregistered agreement for sale deed dated 05.11.2012. It is obvious that since the defacto complainant been permitted to assist the prosecution, the petition under Section 91 Cr.P.C., to call the records from the civil Court was filed. While the purpose of examining the documents already been substantially served by marking certified copy Ex.P.21 and the opinion of the expert PW.13 if any further clarification required the trial Court will take appropriate measures. This Criminal Original Petition therefore, deserves to be dismissed.

13. Hence, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

12.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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Dr.G.JAYACHANDRAN,J.

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To

1.The Judicial Magistrate No.II, Vellore.

2.The Inspector of Police,
D.C.B. (ALGSC) Vellore.

3.The Public Prosecutor,
High Court of Madras,
Chennai-109.

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