



WEB COPY

Crl.O.P.No.25216 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25216 of 2023

M.Kumarraja

... Petitioner

-VS-

V.C.Ravichandran

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to direct the learned Principal District and Sessions Judge, Salem to entertain and number the petition in Crl.M.P.Sr.11700 of 2023 in Crl.A.No.8 of 2022.

For Petitioner

: Mr.R.Prabakar

ORDER

The petitioner herein is the accused in private complaint initiated under Section 138 of the Negotiable Instruments Act, 1881. The said complaint ended against him, hence he has preferred an Appeal and the same is pending before the learned Principal District and Sessions Judge, Salem in Crl.A. No.8 of 2022.

2. In the course of hearing the Appeal, the complainant who is the



respondent in the Appeal had filed an Application to receive certain documents as additional documents in the Appeal. He has wrongly quoted the provision of law as Section 366 of Cr.P.C instead of 391 of Cr.P.C. This Application is strongly opposed by the accused/appellants on various grounds including that the petition is filed under wrong provision of law. The complainant/respondent has therefore, withdrawn his Application to receive additional documents citing wrong provision of law. Thereafter, the petitioner who is the accused in the trial Court/appellant before the appellate Court had filed an Application under Section 391 Cr.P.C. to receive the very same document as additional documents.

3. The Court below after considering the facts has returned the Application on 14.09.2023 with the following endorsement, '1) *The Petition mention list of documents no 1 to 3 are filed only by the respondent complainant in the Trial Court and not filed by the petitioner* 2) *List of documents No.4 to 6 are filed only by the Respondent/Complainant in CMP. No.1/2023 in C.A. No.8/2022 in this Court and not filed by this petitioner, and the same was not pressed by the petitioner in CMP. No.1/2023 dated 02.09.2023 by the respondent/complainant and further this petitioner has filed counter in that CMP. No.1/2023. stating that documents are not marked in the trial Court in the given sufficient time and hence the petition may be*



dismissing. Hence this petition as not maintainable for the above reason.'

The said docket order is under challenge.

4. The learned counsel appearing for the petitioner submitted that this documents which were in possession of the complainant but not been produced by him during the trial. When the complainant sought for production of those documents in the appeal, it was objected by the petitioner/accused and same was withdrawn. However, the right to rely upon those documents by the accused cannot be deprived. Therefore, the order of the lower appellate Court is liable to be set aside, the Application has to be entertained and decided on merits.

5. No doubt, there is a force in submission made by the learned counsel for the petitioner, however, having objected the marking of the documents stating that they cannot be entertained, when it was produced by the complainant before the trial Court, the petitioner cannot resile his own objection and seek for introducing the same documents.

6. Section 391 of Cr.P.C can be explored when the parties were not in possession of the documents at the time of trial and had come to know about the documents at the appellate stage. In this case, the petitioner has knowledge

Dr.G.JAYACHANDRAN, J.



about the document when the complainant filed. In Crl.M.P. No.1 of 2003 in C.A. No.8 of 2022 having objected to the Application and succeeded, the petitioner cannot go back from his own objections filed in the earlier petition. Hence for the sake of uniformity and consistency, this Court hold that the return of application by the lower appellate Court is valid and need not be interfered.

7. With the above observation, this Criminal Original Petition is dismissed.

15.11.2023

Internet : Yes/No

Index : Yes/No

rkp

To

The Principal District and Sessions Judge,
Salem.

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