



CrI.O.P.(MD)No.4853 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2023
CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

CrI.O.P.(MD)No.4853 of 2020
and CrI.M.P.(MD)No.2796 of 2020

Paramasivam

... Petitioner

Vs.

S.Sundar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 03.01.2020 in Cr.M.P.No.7214 of 2019 in STC.No.1435 of 2011 on the file of the Judicial Magistrate No.IV, Tiruchirappalli and allow the same.

For Petitioner : Mr.S.Vinod Sathya Lazar

For Respondent : Mr.C.Mayilvahana Rajendran

ORDER

This Criminal Original Petition has been filed to set aside the order dated 03.01.2020 in Cr.M.P.No.7214 of 2019 in STC.No.1435 of 2011 on the file of the Judicial Magistrate No.IV, Tiruchirappalli and allow the same.



CrI.O.P.(MD)No.4853 of 2020

WEB COPY

2. According to the petitioner, he lodged a complaint under Section 138 of the Negotiable Instruments Act as against the respondent herein and the same is pending in STC.No.1435 of 2011 on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli. After examination of witnesses, the petitioner filed a petition before the trial Court in Cr.M.P.No.7214 of 2019 to reopen the case for marking some documents and the same was dismissed by the learned Magistrate.

3. The learned counsel appearing for the petitioner would contend that the petitioner filed a petition for marking some vital documents and the trial Court dismissed the petition. The accused, in his capacity of Ex-President, executed a lease cum sale agreement dated 30.04.1999 in favour of one K.Elangovan, in respect of plot belonging to the society and the same was registered on 21.06.1999. Subsequently, the accused executed a sale deed dated 28.05.2001 in favour of the said K.Elangovan, which was registered in document No.2579/2001 on 30.05.2001. The said property was, thereafter, purchased by one P.Sivakumar through the petitioner, who acted his authorised power agent vide sale deed dated



CrI.O.P.(MD)No.4853 of 2020

06.09.2002. The said K.Elngovan was introduced to the petitioner by the accused herein and it was the accused, who canvassed the petitioner to purchase the said property. The accused also signed as witness in the sale deed dated 06.09.2002. The sale deed executed by the accused in favour of the said K.Elangovan was unilaterally cancelled by the accused on 30.07.2001 vide registered cancellation deed. However, the encumbrance certificate did not reflect the same. Subsequently, in the year 2009, when the petitioner attempted to sell the property, he came to know about the sale and unilateral cancellation of sale. When he approached the accused in this regard, he issued three post dated cheques as stated in the complaint, in order to settle the scores. In order to prove the transaction, the above said documents are very essential. But the trial Court unfortunately dismissed the petition, without considering the same.

4.The learned counsel appearing for the respondent would contend that already case was posted for arguments, after completion of both side evidence and so many times case was adjourned. But the petitioner has not taken any steps at the earliest point of time. Even according to the petition filed before the trial Court, there is no mentioning about the



CrI.O.P.(MD)No.4853 of 2020

particulars of the documents and there are vague averments and thereby, the trial Court also dismissed the application. Now, only to fill up the lacuna, the present petition filed by the petitioner.

5.Heard both sides and perused the materials available in the records.

6.On perusal of records revealed that the petitioner filed a petition before the trial Court to reopen the case by stating that the petitioner has to mark sale deed, encumbrance certificate, cancellation deed. But the petitioner did not mentioned about the particulars of the documents and those documents are relevant to prove case. The learned Magistrate also passed detailed order stating that the petitioner simply stated that he wanted to mark the sale deed, cancellation deed, encumbrance certificate without assigning any reason under what way the said documents are going to be helpful to decide the case and further, the petitioner has not even produced the copies of the documents and he has not furnished the date of registration or date of reception of those documents. Therefore, the learned Magistrate, after taking into consideration of all the



CrI.O.P.(MD)No.4853 of 2020

averments made in the petition as well as counter, dismissed the application. Now, the petitioner produced the documents. On careful perusal of the documents shows that same are under the custody of the petitioner from the beginning and the documents are pertaining to the year 2002. But no reason was assigned for non-production of the documents before the trial Court. Therefore, there is no infirmity or illegality in the order passed by the trial Court and no interference is warranted in the impugned order.

7.In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

25.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns

To

The Judicial Magistrate No.IV,
Tiruchirappalli



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CrI.O.P.(MD)No.4853 of 2020

P. DHANABAL,J.

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CrI.O.P.(MD)No.4853 of 2020

25.07.2023