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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.OP.No.13391 of 2024
and
CRL.MP.No.8114 of 2024

B. Badrinath ... Petitioner

Vs

B. Saravanakumar ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the Crl.MP.No.7443 of 2023 in CC.No.240 of 2019 and set aside the same pending on the file of Fast Track Judicial Magistrate No.1 of Coimbatore and set aside the same.

For Petitioner : Mr.T.Annaamalai
For Respondents : Mr.P.Sivamani

O R D E R

The Petition filed by the complainant to receive three additional documents which has come to his knowledge subsequent to the commencement of trial, was dismissed by the trial court stating that the copy of the documents sought to be marked not furnished to the respondent accused to provide him an opportunity questioning the genuinenity of the documents and therefore, petition cannot be entertained.

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2. This court, on perusing the application filed under Section 311 of Cr.P.C., before the trial court, finds that the petitioner/complainant has stated what are the documents to be received as an additional documents and the reasons. The opportunity to question the genuinenity of the documents will arise once the document is allowed to be marked and subject to examination, the accused will get the opportunity to cross examine and also place contra document or evidence to discredit the veracity, the documents sought to be produced. The application filed under Section 311 of Cr.P.C., cannot be dismissed on the ground that the copies of the documents sought to be marked for non-furnishing of the copies to be set aside.

3. This court finds that the complainant has come out with a specific case that the accused had communicating in his earlier address and issued notices. Further in the Insolvency Petition filed by him, has admitted liability payable to the complainant. The e-court document is the case status of the insolvency proceeding of the accused. These documents have become necessary for adjudication of the complaint since there is a dispute regarding service of notice to the accused and also pre-defence raised by the accused regarding enforceable liability. Only in the

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course of cross-examination of witnesses, these two defences had been highlighted and therefore, a complaint is not fit to adduce the additional documents.

4. Having sufficiently explained the reasons for recalling PW1 and marked the documents, this court finds that an opportunity must be given to the complainant/petitioner to put forth his case. It is always open to the accused to discredit these documents by way of cross- examination of witnesses as well as adducing positive evidences, both the documentary and oral. By providing the opportunity, no prejudice will be caused to the other side. Therefore, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

5. The order passed by the trial court on 04.04.2024 is set aside. Application filed under Section 311 of Cr.P.C., to recall PW1 and adduce additional documents stated in the petition, is allowed. The trial court shall complete the trial within a period of three months.

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Index: Yes/No
Speaking / Non-speaking Order
gv

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Dr.G.JAYACHANDRAN,J.

gv

To

1. The Fast Track Judicial Magistrate No.1,
   Coimbatore

2. The Public Prosecutor,
   High Court of Madras,
   Chennai.

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and
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