

G.Elumalai vs M.Raja on 29 October, 2024

Author: M.Nirmal Kumar

Bench: M.Nirmal Kumar

Crl

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1346 of 2024 and
Crl.M.P.No.11491 of 2024

G.Elumalai

... Peti

Vs.

M.Raja

... Resp

PRAYER: Criminal Revision Petition filed under Sections 438 & 442 o
BNSS, to set aside the order dated 16.07.2023 in Crl.M.P.No.3693/20
S.T.C.No.947/2017 passed by the learned Judicial Magistrate, Fast T
Court (Magistrate Level), Poonamallee.

For Petitioner : Mr.R.Vijayaraghavan
For Respondent : No Appearance

ORDER

The petitioner/accused has filed a petition under Section 254(1) Cr.P.C in Crl.M.P.No.3693 of 2024 in S.T.C.No.947 of 2021 before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Poonamallee for examination of defence side evidence viz., The Branch <https://www.mhc.tn.gov.in/judis> Manager of Union Bank of India, No.80, Arcot Road, Valasaravakkam, Chennai to produce the statement of accounts of one M.Gnanasekaran Account No.520101039035952 and A.Kailasam Account No.2085001001386. The Trial Court by impugned order, dated 16.07.2024 dismissed the said petition. Against which the present criminal revision case is filed.

2.The learned counsel for the petitioner submitted that the petitioner entered into Memorandum of Understanding with the respondent stating that at the instance of the respondent, the petitioner made deposit by way of RTGS from his account to the account of the said A.Kailasam and M.Gnanasekaran on 28.06.2018. On the same day, the amount was re-credited to the account of the respondent. When this fact put across to the respondent during cross examination, he denied the same. Thereafter, the petitioner took steps to examine A.Kailasam and M.Gnanasekaran as defence witnesses which was allowed and summons were taken. Despite service of summons, A.Kailasam and M.Gnanasekaran failed to appear and the Trial Court closed these two defence witnesses. Left with no other option, after making sufficient ground, the petitioner filed the petition under <https://www.mhc.tn.gov.in/judis> Section 254(1) Cr.P.C. The respondent objected the same and filed his counter stating that the Branch Manager of Union Bank of India cannot be examined on the request of the petitioner because the petitioner has to be examined as defence witness first. Further taken shield under the Memorandum of Understanding, dated 15.10.2010 in which the sale of property and transactions are recorded. From the advance amount of Rs.33,00,000/-, Rs.10,00,000/- by way of NEFT transferred from the Corporation Bank, Valasaravakkam Branch, Rs.5,00,000/- transferred to the respondent's wife and another Rs.5,00,000/- transferred to the respondent. This has been marked as Ex.P1. The petitioner admitted execution of Ex.P1 in a counter that too while deciding the interim compensation has been taken to be an admission and thereafter on that ground it has been rejected is not proper. Hence, filed the present revision.

3.Notice ordered to the respondent. Mr.M.Judy Selva, learned counsel appeared for the respondent and filed counter on 18.09.2024. Today when the case is called, the learned counsel for the respondent not appeared.

4.On perusal of the counter, the respondent's objections seems to be <https://www.mhc.tn.gov.in/judis> that the respondent was examined as PW1 before the Trial Court and he was also extensively cross examined by the petitioner. Without examining A.Kailasam and M.Gnanasekaran, it cannot be said that on the instructions of the respondent, the amount of Rs.5,00,000/- transferred to each of the account. The petitioner was provided with an opportunity to produce the witnesses viz., A.Kailasam and M.Gnanasekaran on 03.01.2024 and thereafter waiting for three months for the witnesses to be examined. Finally on 26.04.2024, the examination of defence witnesses A.Kailasam and M.Gnanasekaran was closed. It is also stated in the counter that there was some dispute in sale of vacant land to the respondent by the petitioner. Since the plot was located in water body area, finally the petitioner sold the property to third party and thereafter the petitioner was not paid as per promise. On 15.10.2020, by way of repayment, Rs.10,00,000/- was transferred to the bank transaction and the balance advance amount of Rs.23,00,000/- was undertaken to be paid within three months, for which two cheques issued for a sum of Rs.8,00,000/- and Rs.15,00,000/- drawn on Syndicate Bank. Due to COVID-19 pandemic, the period was extended and later a fresh cheque for Rs.23,00,000/- was issued by the petitioner drawn on Syndicate Bank on 06.10.2021. Thereafter, the cheque was returned and the <https://www.mhc.tn.gov.in/judis> complaint under Section 138 of the Negotiable Instruments Act, 1881 filed. He further submitted that the petitioner is attempting to introduce frivolous allegations and obstructing the judicial process. The petitioner's contention is fictional one without any sustainable materials.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner in the cross examination of PW1/respondent made out a specific case that on 28.06.2018 at the instance of the respondent, an amount of Rs.5,00,000/- transferred to A.Kailasam and M.Gnanasekaran. On perusal of the statement of account of A.Kailasam and M.Gnanasekaran it is seen that on 28.06.2018 through RTGS an amount of Rs.5,00,000/- transferred and on the same day, it has been re-credited to one M.Raja. This according to the petitioner is none other than the respondent. It is also seen that the petitioner took steps to examine A.Kailasam and M.Gnanasekaran, but they failed to respond the Court summon and the evidence closed. In such circumstances, the petitioner cannot be left without any remedy when the witnesses holding themselves. The adverse inference concept under Section 119 of Bharatiya Sakshya Adhiniyam, 2023 have to be considered.
<https://www.mhc.tn.gov.in/judis>

6.In view of the same, this Court is inclined to give one more opportunity to the petitioner to examine the Branch Manager of Union Bank of India, No.80, Arcot Road, Valasaravakkam, Chennai as defence witness and mark the statement of accounts of A.Kailasam and M.Gnanasekaran.

7.Accordingly, the impugned order, dated 16.07.2024 in C.M.P.No.3693 of 2024 in S.T.C.No.947 of 2021 passed by the learned Judicial Magistrate Fast Track Court (Magisterial Level), Poonamallee is set aside and this Criminal Revision Case stands allowed.

8.This Court directs the learned Judicial Magistrate Fast Track Court (Magisterial Level), Poonamallee to issue summon to the Branch Manager of Union Bank of India, No.80, Arcot Road, Valasaravakkam, Chennai and fix a date for examination. On that date, the petitioner to examine the Branch Manager as defence witness and mark statement of accounts of A.Kailasam and M.Gnanasekaran. This is necessary since the statutory presumption is starring against the petitioner. The examination of Branch Manager and marking of documents to be completed within a period of two months from the date of receipt of a copy of this order. The connected <https://www.mhc.tn.gov.in/judis> criminal miscellaneous petition is closed.

29.10.2024 Index:Yes/No Speaking Order/Non-Speaking Order Neutral Citation: Yes/No vv2 To The Judicial Magistrate, Fast Track Court (Magisterial Level), Poonamallee.

Note: Issue Order Copy on 07.11.2024.

M.NIRMAL KUMAR, J.

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