

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03..06.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.11354 to 11356 of 2015

and

M.P.Nos.1 to 1 of 2015

Mrs.Lalitha Seshadri ... Petitioner in all the Crl.O.Ps

Vs

P.S.Kannan ... Respondent in all the Crl.O.Ps

Common Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., to set aside the order dated 30.03.2015 passed by the learned District Munsif-cum-Judicial Magistrate, Gudalur in Crl.M.P.Nos.7410, 7411 and 7412 of 2014 in C.C.Nos.292, 293 and 291 of 2005 respectively.

For Petitioner : Mr.S.Srinivasan
(In all the Crl.O.Ps)

COMMON ORDER

These petitions are filed to quash the order dated 30.03.2015 passed by the learned District Munsif-cum-Judicial Magistrate, Gudalur in Crl.M.P.Nos.7410, 7411 and 7412 of 2014 in C.C.Nos.292, 293 and 291 of 2005 respectively.

2. The accused is the petitioner before this Court. For the sake of convenience, the parties will be referred to as the complainant and the accused.

3. It is the case of the complainant that the accused and her husband borrowed Rs.12.5 lakhs from the complainant and in discharge of the debt, the accused gave some cheques, which when presented by the complainant were dishonored. The complainant issued statutory notice dated 27.09.2005 to the accused and on failure of the accused to comply with the demand, the complainant lodged three complaints before the learned District Munis-cum-Judicial Magistrate, Gudalur, the details of which are as follows:

C.C.Nos.	Cheque Nos.	Date	Amount	Crl.O.P.Nos.
292/2005	118996	16.06.2005	Rs.2 Lakhs	11354/2015

C.C.Nos.	Cheque Nos.	Date	Amount	Crl.O.P.Nos.
293/2005	118998	06.06.2015	Rs.1.5 Lakhs	11355/2015
291/2005	118997	26.06.2015	Rs.1.5 Lakhs	11356/2015

4. It must be noted that these prosecutions were launched in the year 2005 and somehow the accused has managed to protract the proceedings till 2015. The trial Court took cognizance of the offence and summoned the accused. The accused appeared and the complainant was examined and the complainant filed proof affidavit some times in the year 2006. While so, the accused filed petitions under Sections 311 Cr.P.C. in all the three cases for examining Mr.T.Muralidharan, Advocate on record for the complainant in the trial Court.

5. It is the case of the accused that Mr.T.Muralidharan had issued a notice dated 07.07.2005 on behalf of the complainant to the accused, in which it is stated that the accused had borrowed Rs.13 Lakhs from the complainant. Suppressing the said notice, it is alleged by the accused that a second notice dated 27.09.2005 was sent by the same Advocate on behalf of the complainant, in which it is stated that the accused had borrowed Rs.12 lakhs from the complainant. Therefore, the accused prayed for examining Mr.T.Muralidharan, Advocate as defence witness. The complainant filed a detailed counter, in which it is stated that Mr.T.Muralidharan was his erstwhile counsel and that he had not instructed him to issue the alleged notice dated 07.07.2005 and that the complainant had instructed Mr.T.Muralidharan to issue only the notice dated 27.09.2005. It is further contended by the complainant that during the pendency of the prosecution, the accused came forward to settle the matter amicably in the year 2008 and there were several rounds of discussions during which, the accused in the presence of her counsel agreed to pay the cheque amounts and also a sum of Rs.25,000/- towards litigation expenses. They initially gave Rs.25,000/- but did not repay the cheque amounts as assured by them during the mediation talks and therefore, the prosecution has to take its logical course. It is also contended by the complainant that Mr.T.Muradhilaran was earlier counsel when the complaint was lodged and thereafter, for various reasons, he had to appoint a new counsel to prosecute the case. The trial Court heard the rival submissions and by the orders impugned herein dismissed the petitions. Aggrieved by which, the accused is before this Court.

6. Heard the learned counsel for the accused.

7. On a careful reading of the pleadings and the impugned orders, it is seen that the accused wants to prove the alleged notice dated 07.07.2005, purported to have been issued by Mr.T.Muralidharan, Advocate on the instructions of the complainant. Mr.T.Muralidharan, had issued the notice dated 07.07.2005

as alleged by the accused, the accused has not offered any explanation as to why he did not even bother to reply to the said notice but kept quiet through out. When the accused confronted the complainant during the course of cross examination, the complainant stated that he had instructed Mr.T.Muralidharan, Advocate to issue the notice dated 27.09.2005 and not the notice dated 07.07.2005. This aspect should not be seen in isolation, but should be seen in the backdrop of the fact that the complainant had changed Mr.T.Muralidharan and engaged a new counsel. Thereafter, the notice dated 07.07.2005 has suddenly surfaced. Therefore, something suspicious has transpired between the accused and the complainant's former advocate. That apart, as rightly pointed out by the trial Court, under Section 129 of the Evidence Act, an advocate cannot be compelled to answer questions relating to the communications that has taken place between him and his client. In the same petitions, the accused has prayed for summoning the Branch Manager of Indian Bank, Sathasivam Nagar Branch, Gudalur, in order to prove the transfer of Rs.25,000/- on 12.08.2008 from the account of the accused to the account of Mr.Arjunan, the counsel for the complainant. The learned Judicial Magistrate has dismissed the prayer also on the short ground that the complainant has admitted that he received the sum of Rs.25,000/- during the pendency of the trial, when mediation talks were going on. I have no reasons to come to a different conclusion on this aspect also. When the complainant has accepted in the cross examination that he received Rs.25,000/- from the accused during the Mediation talks in 2008, then there is no necessity to examine the Branch Manager, Indian Bank to prove the same fact. In fine, these petitions are devoid of merits and the same stand dismissed. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

vsm

To

The District Munsif-cum-Judicial Magistrate,
Gudalur.

Cr1.OP Nos.11354 to 11356 of 2015

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