

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 2.06.2015

Reserved On: 30.04.2015

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.11401 to 11406 of 2015

And

M.P.Nos.1 to 1 and 2 to 2 of 2015

A.Gunasingh Immanuel ... Petitioner in all the
Crl.O.P.11401/2015 to 11406/2015/
Accused

Vs.

S.Purushotham Alwin ... Respondent in all the
Nos.Crl.O.P.11401 to 11406/2015/
Complainant

Prayer in Crl.O.P.No.11401 of 2015:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying 1) to dispense with the personal appearance of the petitioner in C.C.No.149/2013 in C.C.No.180/2013, C.C.No.179/2013 in C.C.No.151/2013, C.C.No.150/2013, C.C.No.244/2013 on the file of Judicial Magistrate-I, Udumalpettai; 2) to stay the further proceedings in C.C.No.149/2013 in C.C.No.180/2013, C.C.No.179/2013 in C.C.No.151/2013, C.C.No.150/2013, in C.C.No.244/2013 on the file of Judicial Magistrate-I, Udumalpettai pending disposal of this petition; 3) set aside the order dated 08.04.2015 in CMP.No.1721/2015 in C.C.No.149/2013 in C.M.P.No.1719/2015 in C.C.No.180/2013 in C.M.P.No.1724/2015 in C.C.No.179/2013, in C.M.P.No.1723/2015 in C.C.No.151/2013 in C.M.P.No.1722/2015/ in C.C.No.150/2013, in C.M.P.No.1720 of 2015 in C.C.No.244/2013 on the file of the Judicial Magistrate-I, Udumalpettai.

For Petitioner : M/s.G.Umamaheswari

COMMON ORDER

The petitioner in all these cases is the accused before the Trial Court. For the sake of convenience, the parties will be referred to as the complainant and the accused.

2.Shorn of immaterial frills, it is the case of the complainant that the accused had borrowed various sums of monies on different dates and in discharge of those liabilities, he issued cheques which, when presented were dishonoured and after statutory notice, the complainant lodged six complaints against the accused in C.C.No.149 of 2013, C.C.No.150 of 2013, C.C.No.151 of 2013, C.C.No.179 of 2013, C.C.No.180 of 2013 and C.C.No.244 of 2013 before the learned Judicial Magistrate No.I, Udumalpettai for offence under Section 138 of the Negotiable Instruments Act.

3.In all the cases, the complainant was examined as P.W.1. In all the cases, the complainant filed his proof affidavit and he was cross examined by the accused. Against the assertion of the complainant that the accused owes monies to him, it is the asseveration of the accused that the complainant has no means to lend any money. In the light of this, the complainant filed an application under Section 311 of Cr.P.C. for re-examining him and for marking some documents including telephonic conversation with the accused inorder to prove that the monies were infact lent to the accused. The accused cry foul by contending that the complainant is trying to fill up the lacuna that stood exposed from the answers given by the complainant in the cross-examination.

4.The Trial Court heard the rival submissions and allowed the petition under Section 311 of Cr.P.C. filed by the complainant, aggrieved by which the accused is before this Court.

5.The learned counsel for the accused submitted that the defense have substantially caused dent in the prosecution case by eliciting several answers from the complainant in the cross examination and at this juncture, the Trial Court ought not to have permitted the complainant to be recalled for examination and marking of additional documents. Judicial Precedents on the power of the Trial Court under Section 311 of Cr.P.C. are in legion and requires no recapitulation. Suffice to quote the judgment of the Hon'ble Supreme Court in Iddar Vs. Aabida ((2007) AIR SC W 5490)

wherein, the Hon'ble Supreme Court has discussed the contours of the power under Section 311 of Cr.P.C. and has held that it should be invoked for making the best evidence available even if it is opposed by the accused on the ground of filling up lacuna.

6. In these cases, on a reading of the Trial Court orders which are impugned herein, the Trial Judge has very clearly stated that he is allowing the application of the complainant subject to proof of the additional documents, the evidentiary value of which will be determined only after adequate opportunity is given to the accused to cross examine the complainant. The Trial Court has only stated that an opportunity should be given to the complainant to prove his case and that by itself will not mean that the case has been proved by the complainant without anything more. The accused is also entitled to raise his objections with regard to the relevancy and admissibility of the documents that are proposed to be marked by the complainant whilst in the witness box. Therefore, this Court does not find any perversity or illegality in the order of the Court below.

7. In the result, the petitions are devoid of merits and the same stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate-I,
Udumalpettai.

2. do thro the Chief Judicial Magistrate
Coimbatore

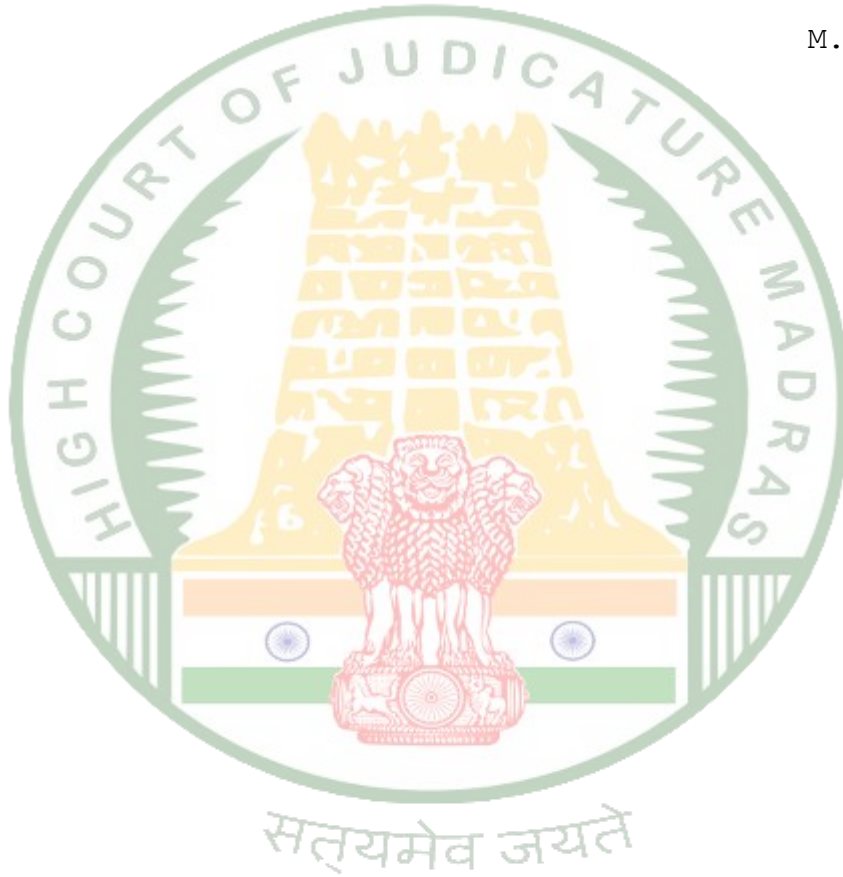
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3. The Public Prosecutor
High Court, Madras.

1 cc to M/s.G. Uma Maheswari, Advocate, Sr. 26567

Crl.O.P.Nos.11401 to
11406 of 2015
And
M.P.Nos.1 to 1 and
2 to 2 of 2015

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