

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.7.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.18880 of 2015 and
M.P.No.1 of 2015

Jayamurugan

... Petitioner/Accused

Vs

Marudhamuthu

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order made in C.M.P.No.9446 of 2014 in S.T.C.No.317 of 2013 dated 19.06.2015 on the file of Judicial Magistrate No.I Pollachi, Coimbatore District.

For Petitioner :Mr.C.Veeraraghavan

For Respondents :Mr.C.Emalias

Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order made in C.M.P.No.9446 of 2014 in S.T.C.No.317 of 2013 dated 19.06.2015 on the file of Judicial Magistrate No.I Pollachi Coimbatore District.

2. Heard the learned counsel for the petitioner.

3. It is seen that the petitioner is an accused and he is facing trial in S.T.C.No.317 of 2013 before the Judicial Magistrate No.I, Pollachi for an offence under Section 138 of Negotiable Instruments Act.

4. According to the learned counsel for the petitioner, the respondent/complainant had given a sum of Rs.5,50,000/- as loan to the petitioner on 12.7.2010 on a promissory note. The cheque issued by the petitioner was dishonoured and after issuing the statutory notice, the complainant lodged a complaint for an offence under Section 138 of Negotiable Instruments Act.

5. It is the case of the complainant that a sum of Rs.5,50,000/- was given to the petitioner and his wife as loan on a promissory note. In the course of cross examination of the complainant by the

petitioner, the complainant has stated that he used to keep money in the bank and he had paid money after drawing from the bank. Therefore, the petitioner filed an application under Section 91 Cr.P.C for a direction to the complainant to produce all his statement of accounts from the year 2010-2013. This petition was numbered as CrI.M.P.No.9446 of 2014 in S.T.C.No.317 of 2013 and after hearing both sides, the learned Magistrate has dismissed the same. Challenging which the petitioner/accused is before this Court.

6. Mr.C.Veeraraghavan, the learned counsel for the petitioner submitted that the burden under Section 139 of Negotiable Instruments Act should be discharged by the accused and therefore, the documents are essential for fair trial.

7. On a reading of the petition filed by the accused before the trial Court, it is seen that he has not even given details relating to the bank from where the documents have to be called for. The Hon'ble Supreme Court in Debendranath padi v. State of Orissa (2003) 2 SCC 711 has held that Section 91 Cr.P.C cannot be used for making a fishing enquiry.

8. Here the loan is based on a promissory note that was executed in the year 2012 and now, the accused is asking the complainant to produce all his bank statements which may not be relevant for the just decision of the case as held by the trial Court. This Court does not find any infirmity in the order passed by the trial Court, warranting interference under Section 482 Cr.P.C.

9. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.
Kua

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.I Pollachi,
Coimbatore District.
2. -do- thro'the Chief Judicial Magistrate,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.C.Vasudevan, Advocate SR 38775

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