IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2015

DELIVERED ON : 14.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.19740 and 19747 of 2015
and M.P.No.1 of 2015

A.Chidambaram .. Petitioner in both Crl.OPs.

Vs

Vasuki Rajagopal .. Respondent in both Crl.OPs.

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to set aside the order in Crl.M.P.Nos.1939 and 1940 of 2015 respectively in C.C.No.12229 of 2007 passed by the learned Metropolitan Magistrate, IV Fast Track Court, George Town, dated 10.06.2015.

For Petitioner Mr.R.Muniyapparaj

C O M M O N O R D E R

These petitions have been filed to set aside the order in Crl.M.P.Nos.1939 and 1940 of 2015 in C.C.No.12229 of 2007 passed by the learned Metropolitan Magistrate, IV Fast Track Court, George Town, dated 10.06.2015.

2. For the sake of convenience, the parties will be referred to as complainant and accused.

3. It is the case of the complainant that he entered into two sale agreements dated 26.04.2004 and 09.07.2004 with the accused for purchasing some properties and had paid Rs.35 lakhs as advance to the accused. When the sale did not go through, the accused agreed to return the amount and gave three post dated cheques, which when presented were dishonoured on 30.10.2006. The complainant issued statutory notice under Section 138 of the Negotiable Instruments Act on 28.11.2006 and since the accused did not comply with the demand, lodged a complaint for an offence under Section 138 of the Negotiable Instruments Act before the jurisdictional Magistrate, which is now under trial in C.C.No.12229

of 2007. During trial, the complainant examined himself as P.W.1 and marked the Memorandum of Understanding dated 12.10.2005 as Ex.P4. The accused filed a petition in Crl.M.P.No.1939 of 2015 in C.C.No.12229 of 2007 under Section 91 Cr.P.C. to call for the records from the Sub Registrar's Office, Saidapet, relating to the issuance of the non-judicial stamp paper on which the Memorandum of Understanding dated 12.10.2005 has been drawn. Similarly, the petitioner also filed Crl.M.P.No.1940 of 2015 in C.C.No.12229 of 2007 for a direction to the Income Tax authorities to produce Income Tax Assessment documents of the complainant. The trial Court heard both sides and by individual orders dismissed both the Crl.M.Ps., aggrieved by which these petitions have been filed.

4. Mr.R.Muniappa Raj, learned counsel for the petitioner submitted that the date of Memorandum of Understanding has been given as 12.10.2005, but whereas, the date of issuance of the non-judicial stamp paper for Rs.20/- is shown as 13.10.2005 and therefore, the documents from the Revenue Authorities and Sub Registrar relating to the issuance of the non-judicial stamp paper by the stamp vendor in the year 2005 would be relevant for the just decision of the case.

5. This Court perused the Memorandum of Understanding dated 12.10.2005 which has been marked as Ex.P4 by the complainant himself. It is true that the date of issuance of the non-judicial stamp paper for Rs.20/- has been shown as 13.10.2005 and it has been sold by one S.Raju, Stamp Vendor, but the date in the Memorandum of Understanding has been shown as 12.10.2005. On a close scrutiny of the Memorandum of Understanding, it is visible to naked eye that, the date has been typed as "__.10.2005" and thereafter number "12" has been added by hand. Number "12" has not been typewritten. Beyond stating this, I do not want to say anything further so as to cause prejudice to the case of the accused.

6. Be that as it may, P.W.1 was in the witness box and he has also been cross examined by the accused on this aspect, for which he has given an answer. The learned trial Judge has correctly pointed out that, there is no necessity to call for the records of the stamp vendor relating to the year 2005 from the Office Sub Registrar now, especially when it is evident from the document itself that the Stamp paper was purchased on 13.10.2005 and the date of the Memo of Understanding is shown as 12.10.2005, which is one day earlier.

7. Similarly, as regards the prayer for calling for the Income Tax particulars of the complainant, this Court is of the view that the accused cannot be permitted to use Section 91 Cr.P.C. for making such a roving enquiry and is obvious that the accused is resorting to such means only to protract the trial which has already been prolonged from the year 2007 to 2015.

In the result, this Court finds no infirmity in the orders passed by the Court below and accordingly, these petitions are dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

gms

To

1.Metropolitan Magistrate,
IV Fast Track Court, George Town

2.The Public Prosecutor
High Court, Madras.

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