

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4-9-2015

Pronounced on : 8-9-2015

CORAM:

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

Crl.O.P.No.30258 of 2012 & M.P.No.1 of 2012
Crl.O.P.No.30259 of 2012 & M.P.No.1 of 2012
Crl.O.P.No.30260 of 2012 & M.P.No.1 of 2012
Crl.O.P.No.30261 of 2012 & M.P.No.1 of 2012

S. Sugavanam ... Petitioner in all Criminal Original Petitions/
Respondent /complainant

Vs.

K.N.Subramania Shah ... Respondent in Crl.O.P.30258 to 30260/2012/
Petitioner/Accused

S.Gangabai ... Respondent in Crl.O.P.30261/2012/Petitioner/
Accused

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to set aside the order dated 1.10.2012 passed in CMP.No.6438/2012 in STC No.765/2007 (in Crl.O.P.30258/2012); CMP.No.6436/2012 in STC.No.763/2007 (in Crl.O.P.30259/2012); CMP.No.6437/2012 in STC.No.762/2007 (in Crl.O.P.30260/2012); and CMP.No.6439/2012 in STC.No.764/2007 (in Crl.O.P.30261/2012) on the file of Judicial Magistrate No.III, Salem and to allow the above Criminal Original Petition.

For Petitioner in all
Crl.O.Ps : Mr.R.Nalliyappan
For Respondent :
in all Crl.OPs : Mr.N.Varadharajan

COMMON ORDER

For the sake of convenience the parties will be referred to as 'the Complainant' and 'the accused'.

2. It is the case of the Complainant that the accused borrowed Rs.10 lakhs from the complainant on 7.6.2016 and in discharge of the said debt the accused gave four cheques,

- (i) dated 7.10.2006 for Rs.3 lakhs;
- (ii) dated 9.10.2006 for Rs.3 lakhs;
- (iii) dated 7.10.2006 for Rs.4 lakhs; and
- (iv) dated 12.10.2006 for Rs.80,000/-,

which when presented, were returned for the reason "payment stopped by the borrower", following which the Complainant issued statutory notice demanding payment and on the failure of the accused to pay the amounts, launched prosecution in STC.No.765 of 2007, 763 of 2007, 762 of 2007 and 764 of 2007 respectively before the Judicial Magistrate No.III, Salem, under section 138 of the Negotiable Instruments Act.

3. After the appearance of the accused before the trial Court, the trial commenced with the examination in chief of the Complainant as PW-1 on 1.4.2008. The accused never cross-examined PW-1. Ultimately the accused cross-examined PW-1 on 27.6.2012 nearly four years later. After cross-examination of the Complainant, PW-1, accused filed CMP No.6438/2012 in STC No.765/2007 (in CrI.O.P.30258/2012); CMP.No.6436/2012 in STC.No.763/2007 (in CrI.O.P.30259/2012); CMP.No.6437/2012 in STC.No.762/2007 (in CrI.O.P.30260/2012); and CMP.No.6439/2012 in STC.No.764/2007 (in CrI.O.P.30261/2012) under Section 91 of Cr.P.C. calling upon the auditors of the complainant to produce the following:

"1. Mr.C.A.Ramesh.V., V.Ramesh & Associates, Chartered Accountants, 5, Second Cross Maravaneri, Salem-636007 to produce the Day Book and Ledger and other Voucher Files maintained by the Accused for the period 2006 to 2012 and to give evidence.

2. The Manager, Relco Bank, Salem to produce the Account Statement of Dr.Sugavanam towards the Loan availed by him from the Bank and the payments particulars if any and the Deed of Mortgage or any other Loan Document. The witness may be directed to produce the documents and to give evidence.

3. Mr.Damodaran, then Manager, George Town Co-Operative Bank, Chennai Main Branch to produce the Letter dt.03.06.2006 given by Dr.Sugavanam to the Bank and also the undertaking letter given by Dr.Sugavanam to the said Bank."

4. The complainant filed counter affidavit opposing the prayer. The trial Court allowed the petitions under Section 91 of Cr.P.C. by orders impugned herein dated 1.10.2012, challenging which the complainant is before this Court.

5. The learned counsel appearing for the complainant submitted that the entire transaction had taken place between the accused and the Complainant in the year 2006; the complaint was filed in the year 2007; and the complainant was cross-examined only in 2012; and thereafter the accused filed the application under Section 91 of Cr.P.C.

6. Per contra, the learned counsel for the accused submitted that the complainant admitted in the cross-examination that he has maintained the accounts and has also submitted returns, and that when he was questioned as to whether he would have any objection to produce them, he has stated in the negative. Therefore, the trial Court was right in allowing the petitions.

7. This Court carefully considered the rival submissions. It is no doubt true that the accused has to discharge the burden under Section 138 of the Negotiable Instruments Act, for which he needs to put up a strong defence. In this case, the transaction relates to the year 2006; the complaint was filed in 2007; PW-1 was examined in chief in 2008; PW-1 was cross-examined by the accused in the year 2012; and thereafter, the accused filed the petitions under Section 91 of Cr.P.C., which have been allowed by the Magistrate on the reasoning that the accused had given notice to the complainant to produce the documents, in spite of which the complainant had not produced the same, and therefore the complainant should be directed to produce the documents.

8. On reading of the petition filed by the accused under Section 91 of Cr.P.C. it does not even disclose how the documents are relevant for the just disposal of the case. The Hon'ble Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2004 AIR SCW 6813) has held that Section 91 of Cr.P.C. cannot be invoked for roving or fishing enquiry.

9. Here, the conduct of the accused itself shows that he has been deliberately delaying the trial from 2008 onwards without even cross-examining the complainant. It is not known how the document called for by the accused would have any bearing on the case. When the petitions filed by the accused themselves are bereft of reasons for calling for the records, the trial Court ought not to have allowed the same. In the considered opinion of this Court, the petitions under Section 91 of Cr.P.C. are filed by the accused only to vex the proceedings.

10. In the result, all the petitions are allowed and the impugned orders passed by the trial Court are set aside. The trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this order. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CSII)

dt:21/9/2015

True Copy

Sub-Assistant Registrar

vr

To

1. The Judicial Magistrate-III, Salem

2. -do-Through the Chief Judicial Magistrate,
Salem District.

+1 cc to Mr.R.Nalliyappan Advocate sr.49483

+1 cc to Mr.N.Varadharajan, Advocate, sr.49138 (28/09/2015)

Crl.O.P.No.30258 to 30261/2012

aa21/9/2015

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