IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.21813 of 2015
and MP.No.1,2 of 2015

Z.Amanullah ... Petitioner

Vs

Sree Guruvayurappan Chit Funds [P] Ltd.,
Rep by its Power Agent N.Sivadoss,
No.10 & 11, 2nd Floor, Umpherson Street,
Maimoon Mansion, Chennai-108. ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the order passed in Crl.MP.No.3131[A] of 2014 in CC.No.2252 of 2012 on the file of the IV FTC, Metropolitan Magistrate, George Town, Chennai and set aside the same.

For Petitioner : Mr.M.Vivekanandan

O R D E R

This petition has been filed to set aside the order in Crl.MP.No.3131[A] of 2014 in CC.No.2252 of 2012 dated 19.09.2014 passed by the learned Metropolitan Magistrate, FTC-IV, George Town, Chennai.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

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

4. It is the case of the complainant that the accused joined a chit transaction with the complainant and in discharge of the liability, had issued a cheque dated 22.06.2012 for Rs.1Lakh, which when presented was dishonoured on the ground “Account Closed”. The complainant issued a Statutory Notice dated 02.07.2012 to the accused under Section 138 of Negotiable Instruments Act. Thereafter, the complainant filed CC.No.2252 of 2012 before the learned VII Metropolitan Magistrate, George Town, Chennai against the accused and the same is now pending before the Metropolitan Magistrate, FTC-IV, George Town.

5. It is the specific case of the accused that, he had joined in the said chit with the complainant in the year 2007 and the chit got over in the year 2009. To that extent, the accused has elicited answers from PW1. It is the contention of the accused that for a chit which had expired in the year 2009, the impugned cheque could never have been given in the year 2012 and that, the debt itself is barred by limitation and therefore, becomes unenforceable.

6. While so, the accused filed Crl.MP.No.3131[A] of 2014 under Section 91 Cr.P.C directing the complainant to produce the following documents:

> "1. The audit report for the chit in the name accused 2007 to 2009.
>
> 2. The registration certificate of the complainant chit company.
>
> 3. The statement of accounts submitted by the complainant chit company for the year 2007, 2008, 2009 submitted before the Registrar of chits."

7. The respondent have filed a counter stating that they do not have those documents. On the short ground, the Trial Court dismissed Crl.MP.No.3131[A] of 2014 on 19.09.2014, challenging which, the accused is before this Court.

8. Learned counsel for the accused submitted that even according to PW1, the chit transaction is only from 2007 to 2009 and that, the account statements have been furnished to the Registrar of Chits. However, in the year 2015, when this application under Section 91 Cr.P.C is filed, the complainant has filed a counter contending that they do not have those documents.

9. An order under Section 91 Cr.P.C can be passed, only if there is unequivocal admission that the documents called for is in the possession of the party. An order under Section 91 Cr.P.C cannot be issued, if the document is not available with the party. Hence, the order passed by the Trial Court cannot be said to be improper.

10. However, the Trial Court while appreciating the evidence shall bear in mind, the specific case of the accused that, the chit transaction was for the year 2007 to 2009 and the impugned cheque is of the year 2012. PW1 had admitted that they have submitted accounts to the authorities, but they are now taking a contention that the documents are not available. Under such circumstances, it is open to the Trial Court to draw an adverse presumption under Section 114[g] of the Evidence Act in favour of the accused, if warranted.

With the above observation, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

gya

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The IV Fast Track Court,
   (Metropolitan Magistrate)
   George Town, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to Mr.M.Vivekanandan, Advocate SR 46672

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