IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 1-9-2015

Pronounced on : 4-9-2015

CORAM:

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

Crl.O.P.Nos.21861 of 2015 & 21862 of 2015

1. M/s.Murali Narasimma Gas Agency,
rep.by its Proprietor T.N.Suresh

2. T.N.Suresh ..Petitioners/Accused

Vs.

M/s.P.Kothandan Silks
rep.by its Partner P.Karunamurthi ..Respondent/Complainant

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to set aside the order of the learned Judicial Magistrate, Arni, Tiruvannamalai District, made in Crl.M.P.No.2792 of 2015 in C.C.No.274 of 2012 and Crl.M.P.No.2793 of 2015 in C.C.No.61 of 2012 dated 28.5.2015 respectively, in dismissing the petitions filed by the petitioner under Section 91 Cr.P.C. on the file of the learned Magistrate.

For Petitioner :Mr.S.Ramachandran

O R D E R

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

2. It is the case of the Complainant that the accused had borrowed Rs.10 lakhs on 28.9.2011 and gave a cheque for Rs.10 lakhs, which when presented for collection, was dishonoured, and after issuing statutory notice on 27.10.2011, a complaint under Section 138 of the Negotiable Instruments Act was launched in C.C.No.274 of 2012 and 61 of 2012 respectively before the Judicial Magistrate, Arni against the accused herein.

3. During trial, the accused filed Cr.M.P.No.2792 of 2015 in C.C.No.274 of 2012 and Cr.M.P.No.2793 of 2015 in C.C.No.61 of 2012 under Section 91 Cr.P.C. to call for the income tax returns of the Complainant from the Income Tax Department. The trial Court heard the parties and by order dated 28.5.2015 dismissed both the petitions, challenging which present criminal original petitions are filed.

4. Heard the learned counsel appearing for the petitioners.

5. It is settled law that the provisions of Section 91 Cr.P.C. cannot be invoked at the mere asking of a party. The trial Court, while dismissing the petitions filed by the accused, in paragraph 7 of the order has stated as follows:

> "7. This petition is filed under Section 91 of Cr.P.C. direct to produce income tax documents by income tax department. The petitioners/accused had filed the petition under Section 91 of Cr.P.C. in Crl.M.P.No.6566/2014 and the petition was allowed. Directed to produce income tax returns of the Respondent/Complainant. Further the Respondent/Complainant has produced the income returns before this Court. In the meantime, this petition is filed by the Petitioners/accused that the produced income tax returns were not genuine documents. Further the contention of the petitioners/Accused is that the Respondent/Complainant has not produced genuine documents related with income tax. To support of his contention, he has not stated any convincing reason to dispute the genuineness of documents. Further the learned counsel for petitioners/accused is not explained that how he comes to the conclusion the produced documents are not genuine one."

From the above it is apparent that the Complainant has himself produced the income tax returns, with which the accused is not satisfied, and that, the accused wants the Court to issue summons to the Income Tax Department to produce the income tax returns of the Complainant.

6. The Honourable Supreme Court in State of Orissa v. Debendra Nath Padhi, 2004 AIR SCW 6813 held that Section 91 Crl.P.C. cannot be invoked to permit a roving or fishing enquiry. It is apparent that from 2011 to 2015 the accused had managed to prolong the case and it is obvious that these petitions under Section 91 Cr.P.C. have been filed only to further vex the complainant.

7. In the result, these petitions are devoid of merits and the same are dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vr

1. The Judicial Magistrate, Arni.

2. -do- Through the Chief judicial Magistrate, Tiruvannamalai.

+ 1 cc to S. Ramochandran, Advocate Sr.48810

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MG(CO)
EU 15.10.15