

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.22459 of 2015
and M.P.No.1 of 2015

Adbul Azum
S/o.Abdul Rahim,
Prop. of R.C.N. Care,
E.24, Varathappan Street,
Fort Salem. .. Petitioner

Vs.

B.K.N.Sulaiman .. Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the entire records of the order dated 16.02.2015
made in C.M.P.No.1316 of 2015 in C.C.No.114 of 2013 on the file of
the Judicial Magistrate No.2, Salem and set aside the same.

For Petitioner :: Mr.K.A.Ravindran

O R D E R

This Criminal Original Petition has been filed praying to set
aside the order dated 16.02.2015 made in C.M.P.No.1316 of 2015 in
C.C.No.114 of 2013 on the file of the Judicial Magistrate No.2, Salem.

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

3. It is the case of the complainant that, the accused
borrowed Rs.4,00,000/- from him on 16.02.2012 by way of cash and in
discharge of the said liability, the accused gave an impugned cheque
No.772968 dated 16.12.2012 for Rs.4,00,000/-, which when presented
was dishonoured on the ground that "payment stopped by the drawer".
The complainant issued statutory notice dated 08.03.2013 and since
the accused did not repay the amount, he initiated prosecution in
STC.No.114 of 2013 under Section 138 of Negotiable Instruments Act,
before the learned Judicial Magistrate No.II, Salem. During the
course of trial, the complainant was cross-examined by the accused.

4. It is the specific case of the accused that, he had no
financial dealings, whatsoever with the complainant and that the
impugned cheque was given by the accused to one Mehaboob Basha, with

whom he had joined a chit transaction. The accused had filed insolvency proceedings on 22.03.2012 in I.P.No.19/2012, in which the said Mehaboob Basha has been shown as one of the creditors. In the schedule to the petition, the accused has cited the name of Mehaboob Basha and also has referred to the impugned cheque that was issued to Mehaboob Basha. Under such circumstances, the accused preferred a petition under Section 91 Cr.P.C. in C.M.P.No.1316 of 2015 in S.T.C. NO.114/2013 calling for the complainant to produce the following documents :

- 1) Shop License issued by Salem Corporation.
- 2) Rental receipt issued by Salem Corporation for payment of rent.
- 3) Pan Card
- 4) Bank Pass Book, Savings and Current Account of the complainant.
- 5) Income Tax returns for the years 2010-2012 and 2012 to 2013.
- 6) Form 2-D (Saval copy) of the return filed for the year 2010 to 2012 and 2012 to 2013.
- 7) Auditor Reports for the period of 2010 to 2012 and 2012 to 2013.
- 8) LIC Loan details from 2009 to 2014.

5. The Trial Court after hearing both sides, dismissed the petition on 16.02.2015, challenging which the accused is before this Court.

6. Heard Mr.K.A.Ravindran, the learned counsel for the accused.

7. On a careful scrutiny of the records, it is seen that the petition in C.M.P.No.1316 of 2015 filed by the accused does not give any reasons for calling the aforesaid records. In State of Orissa Vs Debendra Nath Padi [2004 AIR SCW 6183], the Hon'ble Supreme Court has held that, provision of Section 91 Cr.P.C., cannot be invoked for making any roving or fishing enquiry. In this case, there are sufficient materials with the accused, in order to show that the impugned cheque was referred to in the insolvency proceedings that was initiated by the accused, prior to initiation of the proceedings in S.T.C.No.114 of 2013 by the complainant.

8. Under such circumstances, the Trial Court has rightly dismissed the petition filed by the accused. Hence there is no infirmity in the order passed by the Trial Court and accordingly, this petition is dismissed with liberty to the accused to establish his case in the manner known to law. Consequently, connected miscellaneous petition is also dismissed.

ds

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Judicial magistrate No.2,
Salem.

+ 1 cc to Mr.K.A.Ravindran, Advocate SR 48753

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