

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-9-2015

Coram

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.23400 of 2015

Crl.O.P.No.23401 of 2015 & M.P.No.1 of 2015

1. M/s.Sakthivel & Co.,
A Partnership Firm,
rep.by its Partner N.Sakthivel
7-9, Muthuvelappa Street,
Kaikolan thottam,
Erode -1.
2. N. Sakthivel
3. S. Thamilarasi ... Petitioners in both petitions/
Petitioners/Accused.

Vs.

S.M.Chinnasamy ... Respondent in both petitions/
Respondent/Complainant.

Prayer in Crl.O.P.No.23400/2015: Criminal Original Petition filed under Section 482 Cr.P.C. with a prayer to set aside the order dated 2.9.2015 made in C.M.P.No.5625 of 2015 in C.C.No.66 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode.

Prayer in Crl.O.P.No.23400/2015: Criminal Original Petition filed under Section 482 Cr.P.C. with a prayer to set aside the order dated 2.9.2015 made in C.M.P.No.5624 of 2015 in C.C.No.66 of 2013 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioners
in both the petitions : Mr.M.Guruprasad
For Respondent : Mr.C.Emalias,
in lboth the petitions Additional Public Prosecutor

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 had borrowed a sum of Rs.10 lakhs from the complainant on 20.11.2012, in discharge of which the accused had given a cheque dated 20.12.2012 for Rs.10 lakhs, which when presented, was returned unpaid for insufficiency of funds. The Complainant issued a statutory notice on 5.1.2013 under section 138 of the Negotiable Instruments Act, and since the accused did not comply with the demand, a complaint in STC No.66 of 2013 was preferred before the Court below for the offence under Section 138 of the Negotiable Instruments Act.

3. The Complainant was examined as PW-1 and was also cross-examined by the accused. The accused was questioned under Section 313 Cr.P.C. The Bank Manager, where the accused is holding account was examined as DW-1, and the Bank Manager, where the Complainant is holding account was examined as DW-2. At this stage, the accused filed Cr.M.P.Nos.5624 and 5625 of 2015 under Section 91 and 311 Cr.P.C. respectively to produce 256 self-cheques that were allegedly passed by the accused's bank and also to recall the Bank Manager for the purpose of marking those cheques. After hearing both sides, the trial Court by the orders impugned, dismissed both the petitions, challenging which the accused is before this Court.

4. Mr.M.Guruprasad, learned counsel appearing for the petitioners/accused submitted that the complainant was a staff working with the accused, and that, the impugned cheque was given as a self-cheque to the complainant for the purpose of withdrawing money from the bank and delivering it to the accused, which was misused by the complainant. In this regard, learned counsel took me through the evidence of the complainant and the Bank Manager. In the cross-examination of the complainant, he has been shown the impugned cheque, which bears the signature of the accused, both on the front side and on the reverse side. Nevertheless, the impugned cheque was drawn in favour of the complainant. In the cross-examination of DW-1, an answer has been elicited that the accused has given about 256 self-cheques during a certain period of time, and therefore those self-cheques have to be produced for the purpose of discharging the burden under section 138 of the Act.

5. This Court carefully considered the submissions of the learned Counsel for the petitioners.

6. A reading of the petition filed by the accused under Section 91 of Cr.P.C. shows that the petitioners have not even stated how those 256 self-cheques would be relevant for the purpose of the fact in issue in this case. Hon'ble the Supreme Court in State of Orissa v. Debendra Nath Padhi (2004 AIR SCW 6813), has held that the provisions of Section 91 of Cr.P.C. cannot be used for making roving and fishing enquiry. In this case, after entire evidence are completed, and when the matter was posted for arguments, the petitioners have come up with a bald petition to call the Bank

Manager to produce 256 cheques, purported to have been issued by the accused. The trial Court has rightly dismissed the petitions holding that they have been filed only for the purpose of prolonging the trial. This Court is in complete agreement with the orders passed by the Court below and they do not suffer from any infirmity.

7. In the result, both the Criminal Original Petitions are dismissed as they are devoid of merits. Connected miscellaneous petition is also dismissed. The trial Court shall proceed with the trial without in any way influenced by any of the observations made above.

vr

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate, Fast Track Court No.I, Erode
2. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.M.Guruprasad, Advocate SR 50763 (Crl.O.P.No.23400/2015)

+ 1 cc to Mr.M.Guruprasad, Advocate SR 50765 (Crl.O.P.No.23401/2015)

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Crl.O.P.No.23400 & 23401/2015

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