

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2015

DELIVERED ON : 14.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.25241 of 2015
and M.P.No.1 of 2015

R.Lingasekar ... Petitioner/Accused

Vs

S.Senthilvel .. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to order made in CMP No.1153 of 2015 in C.C.No.12/2014 on the file of the Fast Track Judicial Magistrate, Mayiladuthurai, dated 13.08.2015 and set aside the same.

For Petitioner Mr.C.Sivakumar

O R D E R

This petition has been filed to call for the records pertaining to order made in CMP No.1153 of 2015 in C.C.No.12/2014 on the file of the Fast Track Judicial Magistrate, Mayiladuthurai, dated 13.08.2015 and set aside the same.

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

3. It is the case of the complainant that the accused borrowed Rs.16 lakhs on 20.09.2011 for his business needs and executed a promissory note on the same day, agreeing to repay the same. In discharge of his liability, the accused issued a cheque dated 04.09.2013 for Rs.20 lakhs, which when presented was dishonoured for "Insufficiency of funds". The complainant issued a statutory notice dated 18.09.2013 to the accused, in response to which the accused issued a reply notice dated 12.10.2013. Since the accused did not comply with the demand, the complainant initiated prosecution in C.C.No.12 of 2014 under Section 138 of the Negotiable Instruments Act and the case is now pending on the file of Fast Track Judicial Magistrate, Mayiladuthurai. The complainant was examined as P.W.1 and he was also cross examined by the accused.

4. It is seen that the complainant has also filed a money suit in O.S.No.21 of 2014 before the Principal District Court, Nagapattinam against the accused, based on the promissory note for recovery of money. After the accused was examined under Section 313 Cr.P.C., the accused further prayed for cross examining P.W.1, which was also allowed by the Court. Thereafter, the accused filed C.M.P.No.1153 of 2015 in C.C.No.12 of 2014 under Section 91 Cr.P.C. to call for the promissory note from O.S.No.21 of 2014 from the Principal District Court, Nagapattinam and send the same to the handwriting expert for comparison of handwriting. After hearing both sides, the learned Judicial Magistrate, Fast Track Court dismissed CMP No.1153 of 2015 on 13.08.2015, challenging which the accused is before this Court.

5. Learned counsel for the accused submitted that the promissory note was not executed by him in favour of the complainant and therefore, it is essential to call for the promissory note from the file of the Principal District Court, Nagapattinam.

6. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused. The accused received the statutory notice dated 18.09.2013 issued by the complainant under Section 138 of the Negotiable Instruments Act and in the reply notice dated 12.10.2013, he has clearly stated that he had signed a promissory note and the cheque, but had given it to one Baskar. Therefore, it is not the case of the petitioner that he did not sign the promissory note at all.

7. In the considered opinion of this Court, the attempt to call for the promissory note from the civil Court is only to stall both the proceedings and completely frustrate the endeavor of the complainant to recover the money lent by him by lawful means. In the State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6183], the Supreme Court has clearly held that Section 91 can be invoked only when the document that is called for is necessary and desirable in the context of the purpose for which it is required and that no roving or fishing enquiry can be permitted with the aid of Section 91 Cr.P.C.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/--

Asst.Registrar (CO)

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To

1.Fast Track Judicial Magistrate, Mayiladuthurai.

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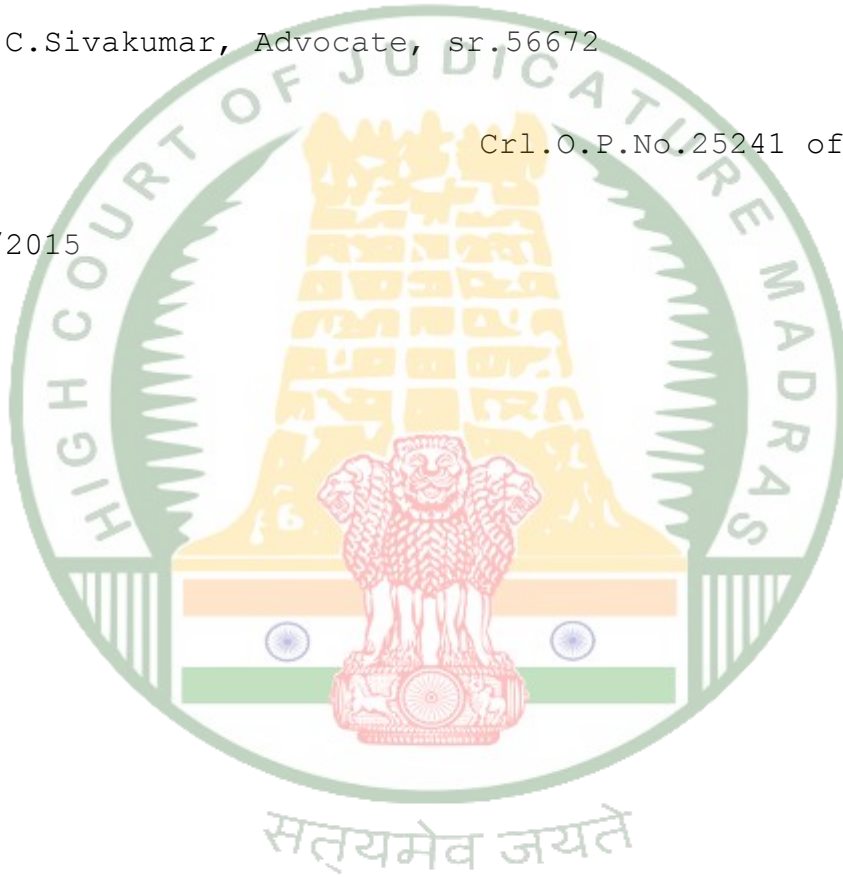
2. The Chief Judicial Magistrate, Nagapattinam

3.The Public Prosecutor, High Court, Madras.

+1 cc tMr.C.Sivakumar, Advocate, sr.56672

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