

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP.No.4049 of 2015
and M.P.No.1 of 2015

S.Abirami @ Abi ... Petitioner/Accused.

Vs

V.B.Adhi Narayanan ... Respondent/Complainant.

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 10.12.2014 in CMP No.4577 of 2014 in CC.No.288 of 2013 on the file of the learned Judicial Magistrate No.I, Salem.

For Petitioner :Mr.K.S.Karthikraja

ORDER

This petition has been filed to set aside the order dated 10.12.2014 in CMP No.4577 of 2014 in CC.No.288 of 2013 on the file of the learned Judicial Magistrate No.I, Salem.

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 the accused and complainant. It is the case of the complainant that on 21.11.2012, the accused borrowed a sum of Rs.4,00,000/- from the complainant, promising to pay the said amount with interest. The accused gave a post-dated cheque dated 21.03.2013 for Rs.4,00,000/- in favour of the complainant. When the said cheque was presented on 21.03.2013, the same was dishonoured on the ground of "funds insufficient". The complainant issued a statutory notice dated 18.04.2013 and on the failure of the accused to repay the amount, launched a prosecution in CC.No.288 of 2013 before the learned Judicial Magistrate No.I, Salem, under Section 138 of the Negotiable Instruments Act, against the accused. During the course of trial, the complainant has been examined as PW1 and he was also cross examined by the accused. It is the case of the accused that the complainant has no means to give the loan and that the entire loan transaction is a sham. Therefore, the accused filed CMP No.4577 of

2014 in CC.No.288 of 2013 under Section 91 of the Code of Criminal Procedure, for a direction to the complainant to produce "source of documents in the year 2012 October and November for Rs.8 Lakhs possessed to him and thus render Justice." The trial Judge, after hearing both sides, has dismissed CMP No.4577 of 2014 on 10.12.2014, challenging which, this petition has been filed.

4.The learned counsel for the petitioner submitted that the petitioner/accused has to discharge the burden under Section 139 of the Negotiable Instruments Act, and therefore, the trial Court was not justified in dismissing the petition, filed under Section 91 of the Code of Criminal Procedure.

5.On perusal of the petition, filed by the petitioner/accused, in Para 2, it is stated as follows:

"2.PW1, in his cross examination admitted that he is able to produce documents, therefore for purpose and relevancy of those documents to prove his defense."

6.On reading of the cross examination of PW1, he has clearly stated that he had a sum of Rs.8,00,000/- in the year 2012, which money he got from his son and daughter-in-law, who are employed and that he also pledged some of the jewels. Therefore, the aforesaid averments in the petition that the complainant had admitted that he is able to produce the documents, is not true.

7.Be that as it may, the prayer in the petition, as an Omnibus direction to the complainant to produce his source of income, which is not maintainable under Section 91 CrPC because, for exercising the power of 91 CrPC, the petitioner should give specifically the description of documents and how it is relevant for deciding the fact in issues. The petition filed by the petitioner is bereft of the minimum details, require for exercising powers under Section 91 CrPC.

8.That apart, the Hon'ble Supreme Court in Debendranath Padi v. State of Orissa reported in (2003) 2 SCC 711, held that Section 91 of the Code of Criminal Procedure cannot be used for fishing inquiry.

9.In view of the above, this petition is devoid of merits and accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.

mps

s/d-

Assistant Registrar(CS-III)

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Sub-Assistant Registrar

To

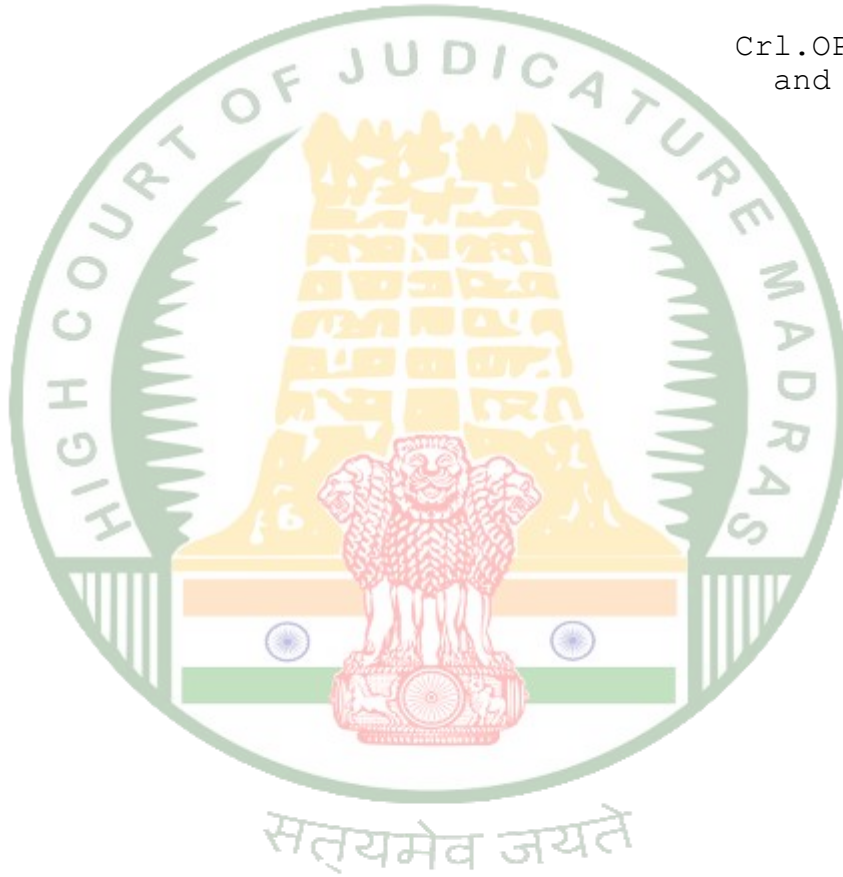
1. The Judicial Magistrate No.I,
Salem.

2. -do- thro'the Chief Judicial magistrate,
Salem.

+ 1 cc to Mr.K.S.Karthik Raja, Advocate SR 37861

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Crl.OP.No.4049 of 2015
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