

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP.No.4050 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.4576 of 2014 in CC.No.289 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.4576 of 2014 in CC.No.289 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 complainant and accused. It is the case of the complainant that the accused borrowed a sum of Rs.3,00,000/- on 28.10.2012 promising to pay the said amount with interest. The accused gave a cheque dated 28.12.2012 for Rs.3,00,000/- in favour of the complainant. When the said cheque was presented on 28.12.2012, the same was dishonoured on the ground of insufficient funds. The complainant issued a statutory notice under Section 138 of the Negotiable Instruments Act, and since the accused did not pay the money, he filed a complaint in CC.No.289 of 2013 before the learned Judicial Magistrate No.I, Salem, for offence under Section 138 of the Negotiable Instruments Act against the accused.

4.During the course of trial, the complainant was 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 sheer. The accused filed CMP No.4576 of 2014 in CC.No.289 of 2013 under Section 91 CrPC with the following prayers:

"Therefore, it is prayed that this Hon'ble Court may be pleased to order directing the complainant to cause the production source of documents in the year 2012 October and November for Rs.8 Lakhs possessed to him and thus render Justice."

5.The trial Court, after hearing both sides, has dismissed CMP No.4576 of 2014 in CC.No.289 of 2013 by an order dated 10.12.2014, challenging which, this petition has been filed.

6.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."

7.The learned counsel for the petitioner submitted that the trial Court ought not to have dismissed the application and should have directed the complainant to produce the records so that it will be useful for the accused to discharge the burden under Section 139 of the Negotiable Instruments Act. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner/accused. In the petition filed by the accused before the trial Court, it is averred that the complainant had admitted that he will be able to produce the documents, but whereas on reading the evidence of the complainant, he has not made any such admission. The complainant has stated that he received Rs.8 lakhs in the year 2012 from his son and daughter-in-law and also pledged some of the jewels. Therefore, the averment in Para 2 of the petition, which is extracted above, is incorrect. That apart, an omnibus prayer for a direction to the complainant, to prove his source of income, is not maintainable under Section 91 CrPC.

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

In view of the above, this petition is devoid of merits and accordingly, dismissed. The trial Court shall proceed with the trial expeditiously without being influenced by the observations made above. Consequently, connected Miscellaneous Petition is closed.

mps

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

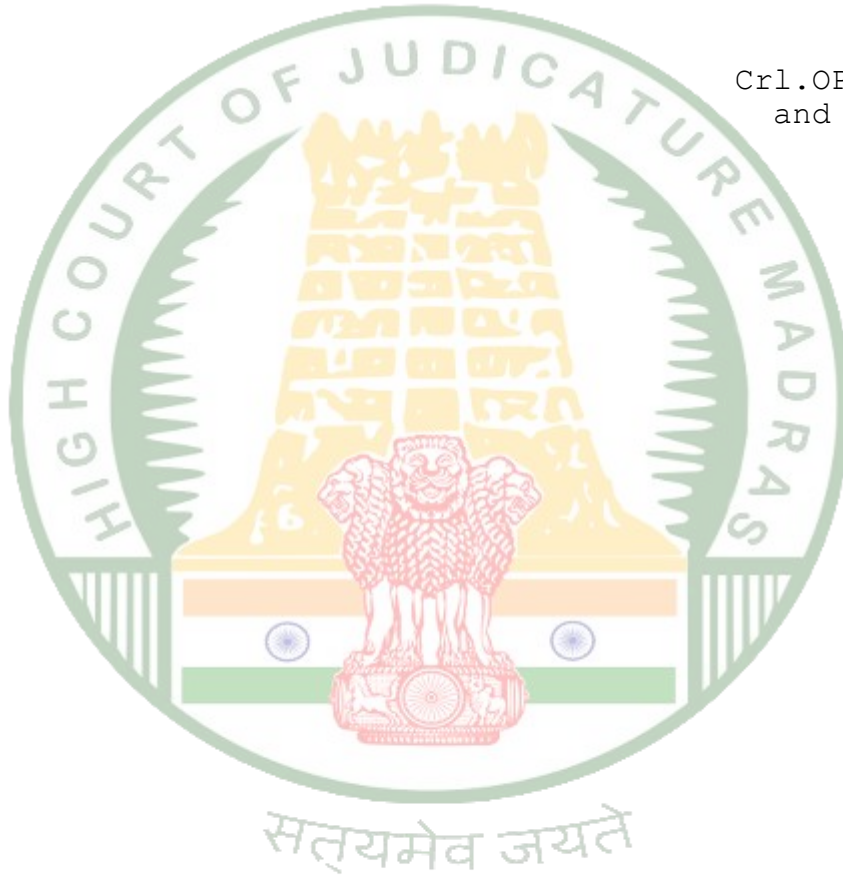
1. The Judicial Magistrate No.I,
Salem.

2. -do- thro' The Chief Judicial Magistrate,
Salem.

+ 1 cc to Mr.K.S.Karthik Raja, Advocate SR 37862

vsn(co)
prk7/8

CrI.OP.No.4050 of 2015
and M.P.No.1 of 2015



WEB COPY