

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2015
DELIVERED ON : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.7339 of 2015
and M.P.No.1 of 2015

Devi .. Petitioner/Accused

S.Rajkumar vs. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. against the order dated 26.12.2014 made in Crl.M.P.No.1153 of 2014 in C.C.No.2592/2012 on the file of Fast Track Court II, Egmore, Chennai dismissing the petition filed by the petitioner.

For Petitioner : Mr.C.S.Saravanan
For Respondent : Mr.M.Mohamed Riyaz
Govt. Advocate [crl.side]

O R D E R

This petition has been filed challenging the order dated 26.12.2014 made in Crl.M.P.No.1153 of 2014 in C.C.No.2592/2012 on the file of Fast Track Court II, Egmore, Chennai, dismissing the petition filed by the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Advocate [crl.side] appearing for the State.

3. For the sake of convenience, the parties would be referred to as the complainant and the accused.

4. The accused is the petitioner before this Court. The complainant lodged a private complaint against the accused for an offence under Section 138 of the Negotiable Instruments Act and examined himself as P.W.1 and the accused was examined by the Court under Section 313 Cr.P.C. At that time, the accused took a defence that he has not issued the impugned cheque and that he had no relationship, whatsoever with the complainant. Then the accused filed an application under Section 91 Cr.P.C calling for the following documents:

- All the transaction details between the petitioner and respondent/complainant.
- Sale Agreement dated 12.12.2011
- Statement of account
- Income Tax Returns
- Bank Account Particulars

5. The complainant resisted the application and the trial Court dismissed the petition filed by the accused in CrI.M.P.No.1153 of 2014 on 26.12.2014, aggrieved by which the present petition has been filed.

6. The learned counsel for the accused submitted that the documents sought by them are very much essential and necessary for the defence of the accused and for discharging the burden under Section 139 of the Negotiable Instruments Act.

7. This Court carefully perused the order passed by the trial Court. The trial Court dismissed the petition stating that the petition has been filed by the accused without creating a foundation on basis. All along the accused has taken a defence that he had nothing to do with the complainant and now the accused wants the complainant to produce the aforesaid documents, which would have no bearing on the defence taken by the accused.

8. 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 Dr.Rajesh Talwar and another vs. C.B.I. and another [(2013) 4 MLJ (CrI) 362 (SC)], the Supreme Court has held that Section 91 should not be used for dilatory tactics. In this case, as held by the trial Court, the accused has not given any explanation as to how those documents which he call for would be relevant for the just decision of this case.

In view of the above, there is no infirmity in the order passed by the trial Court and accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Fast Track Court II, Egmore, Chennai
2The Public Prosecutor, High Court, Madras.

CrI.O.P.No.7339 of 2015

SAI (CO)

Eu 28.04.2015

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