

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.06.2015

CORAM

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.23057 of 2010  
and M.P.Nos.1 and 2 of 2010

S.Anand

.. Petitioner

.. Vs ..

B.Narayanasamy

.. Respondent

Prayer:- Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to set aside the order dated 02.09.2010 passed by the learned IV Additional Sessions Judge, Chennai in Crl.Rc.No.39 of 2010 confirming the order dated 13.04.2010 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.2392 of 2010 in C.C.No.6513 of 2007.

For Petitioner : Party-in-person

For Respondent : No Appearance

ORDER

The accused in C.C.No.6513 of 2007 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, is the petitioner herein.

2.The respondent/complainant filed a complaint dated 20.01.2005 against the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act and this petition is filed to set aside the order dated 02.09.2010 passed by the learned IV Additional Sessions Judge, Chennai in Crl.Rc.No.39 of 2010, confirming the order passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai dated 13.04.2010 in Crl.M.P.No.2392 of 2010 in C.C.No.6513 of 2007.

3.It is submitted by the petitioner/party-in-person that the respondent is an usurious money lender. The petitioner borrowed a sum of Rs.2,70,000/- between April 2001 and June 2002 from the respondent/complainant. At the time of borrowing the money, the respondent obtained several blank cheques, blank stamp papers of Rs.10 and Rs.20 and unfilled pro-notes. The complainant charged exorbitant interest of 5% per month and the petitioner refused to pay

the same. Hence, the petitioner was threatened by the complainant. Therefore, the petitioner filed a complaint before the Commissioner of Police, which was numbered as COP No.3462 of 2004. The said complaint was transferred to the Assistant Commissioner of Police, T.Nagar for enquiry. Thereafter, the petitioner found that the blank cheques, blank stamp papers of Rs.10 and Rs.20, which were in the possession of the complainant were misused for the purpose of creating false documents like pro-notes dated 5.02.1999, 10.02.1999 and 10.02.2002, agreement dated 10.02.2002 and the cheque dated 20.09.2004 was fabricated and the complainant demanded exorbitant interest. During enquiry, the complainant had given an undertaking before the then Assistant Commissioner of Police, T.Nagar and the enquiry was over.

4.It is further submitted that the petitioner filed a petition in Crl.M.P.No.2392 of 2010 under Section 91 Cr.PC requesting the Commissioner of Police to produce the file regarding the petition enquiry conducted by the Assistant Commissioner of Police, T.Nagar in C.O.P.No.3462 of 2004, dated 20.09.2004 against the complainant/respondent for the offences under Exorbitant Interest Act. That petition was dismissed by the learned Metropolitan Magistrate and therefore, the petitioner filed a revision petition in Crl.Rc.No.39 of 2010 on the file of the learned IV Additional Special Judge, Chennai and that revision was also dismissed and aggrieved against the same, this criminal original petition is filed.

5.The petitioner/party-in-person further submitted that the petition filed in Crl.M.P.No.2392 of 2010 under Section 91 Cr.PC requesting the Commissioner of Police to produce the file regarding the petitioner's enquiry conducted by the Assistant Commissioner of Police, T.Nagar in C.O.P.No.3462 of 2004, dated 20.09.2004 against the complainant/respondent for the offences under Exorbitant Interest Act was not properly appreciated by the Courts below. Hence, this criminal original petition may be allowed.

6.Heard the petitioner/party-in-person. There is no representation for the respondent.

7.I am unable to accept the contention of the petitioner/party-in-person. A complaint was filed by the respondent stating that the petitioner borrowed a sum of Rs.3,00,000/- on 05.02.1999. The petitioner also borrowed a sum of Rs.2,00,000/- on 10.02.1999 by executing a promissory note. On default in payment of both principal and interest, a fresh pro-note dated 10.02.2002 was executed for the amount of Rs.8,60,000/-. For the said principal and interest, the petitioner issued two post dated cheques bearing Nos.023294 and 023296 dated 20.09.2004 for Rs.8,60,000/- and Rs.6,16,000/- respectively. Both cheques were presented for collection and that were returned on 17.11.2004 with an endorsement "Funds Insufficient". After completing the statutory formalities, a complaint was filed for appropriate action.

8.It is admitted that the complainant was examined and at that stage, a petition in Crl.M.P.No.2392 of 2010 was filed by the petitioner. The learned Judge dismissed the said petition relying on the judgment reported in 1999(1) Madras Weekly Notes (Crl.) page 117 (SIVANANDAM vs. INSPECTOR OF POLICE, SPECIAL POLICE ESTABLISHMENT, CBI, ANTI-CORRUPTION BRANCH) holding that the document sought for by the petitioner was not relating to the facts of the case and the learned revisional authority also confirmed the order passed by the learned Magistrate. Therefore, this Court is of the opinion that there is no infirmity in the orders passed by both the Courts below and the document sought for by the petitioner is not relevant to the facts of the case. Even if it is assumed that the respondent was enquired on the ground that he was collecting usurious interest, having regard to the facts of the case, the petitioner has nothing to do with the personal enquiry and it is for the petitioner to prove his case during the course of trial. Hence, I do not find any merit in this petition.

9.In the result, the criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

10.The learned trial Judge is directed to dispose of the case in C.C.No.6513 of 2007 within a period of two months from the date of receipt of a copy of this order.

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s/d-  
Assistant Registrar(LA)

True Copy

Sub-Assistant Registrar

To

1.The learned IV Additional Sessions Judge,  
Chennai.

2.The learned XXIII Metropolitan Magistrate,  
Saidapet, Chennai.

rsi(co)  
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