

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Crl.O.P.No.24855 of 2009

And

M.P.Nos. 1 & 2 of 2009

Ayyasamy ... Petitioner/Petitioner/Petitioner/
Accused

Vs

S.K.Chinnasamy ... Respondent/Respondent/Respondent/
Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, against the order, dated 15.09.2009 made in Crl.R.C.No. 11 of 2009 on the file of the First Additional Sessions Judge, Erode, confirming the dismissal order dated 17.12.2008 made in C.M.P.No. 8903 of 2008 in C.C.No. 406 of 2006 on the file of the Judicial Magistrate No.II, Erode.

For Petitioner : Mr.R.Marudhachalamurthy

O R D E R

This petition has been filed by the petitioner -accused challenging the order passed by the First Additional Sessions Judge in Crl.R.C.No. 11 of 2009 wherein confirmed the order passed by the Judicial Magistrate No.II, C.M.P.No. 8903 of 2008.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The brief facts of the case in a nutshell are that the respondent herein filed a criminal complaint for the alleged offence under Section 138 of the Negotiable Instrument Act and the above said case was numbered as C.C.No. 406 of 2006 on the file of Judicial Magistrate Court No.II, Erode and it is pending. During the pendency of the above said criminal case, the petitioner-accused filed a petition in Crl.M.P.No. 5493 of 2008 to produce the documents pertaining to BEST Agency wherein the petitioner and the respondent are partners. The Magistrate Court has partly allowed the petition on

03.10.2008 and directed the respondent herein to produce the documents 1 to 8 for the period relating to 2001-2003 on or before 10.10.2008.

4. According to the petitioner, the respondent herein produced only two documents, namely, original partnership deed dated 05.02.2001 and Bank Accounts Statements for the BEST Agency on 31.10.2008. The contention of the petitioner is that the respondent herein willfully neglected to produce the document despite of the orders of the Magistrate Court and it amounts to an offence and on that ground the petitioner filed a petition in Crl.M.P.No. 8903 of 2008 under Section 93 of Code of Civil Procedure to issue search warrant since not complied the direction of the criminal Court.

5. The respondent - complainant filed a detailed counter wherein it is stated that already he produced all the available documents as required by the petitioner before the Magistrate Court and further the respondent has clearly deposed at the time of evidence as he has not having any other original documents relating to BEST Agency. According to the respondent, all the documents sought for by the petitioner herein are available with the petitioner and only to drag on the proceedings, he filed such petition and therefore, there is no need to issue any search warrant as prayed for by the petitioner. According to the respondent, the above said documents are not necessary to decide the case. For the above said reasons, the respondent objected to allow the above petition.

6. On hearing both sides, the Judicial Magistrate No.II, Erode, dismissed the above said petition filed by the petitioner. In the above said order, the Magistrate had observed that in the deposition of PW-1 itself clearly shows that the petitioner-accused alone look after and administered the BEST Agency and the above said fact was admitted at the time of his evidence and therefore, the petitioner himself can proved by examining his defence witnesses and also by marking relevant documents if any available with him and hence, no need to issue any search warrant as prayed for by the respondent.

7. Aggrieved by the above said order passed by the Judicial Magistrate, the petitioner-accused preferred a revision petition in Crl.R.C.No. 11 of 2009 on the file of Principal District Court, Erode. The District Judge has considered both sides submissions and finally came to the conclusion that the documents sought for by the petitioner are not available with the respondent and further those documents are irrelevant for the main case. Further the Judge has held that the petition has been filed only with mala fide intention of protracting the proceedings and therefore, the order of dismissal passed by the Magistrate Court is valid and there is no need to interfere with the above said findings and finally dismissed the revision petition.

8. The petitioner herein preferred this Criminal Original Petition challenging the concurrent findings of both the Courts below. The learned counsel appearing for the petitioner submitted that in spite of the specific order passed by the Magistrate Court, the respondent has failed to produce remaining documents and therefore filed the petition to search in the premises of the respondent, but the Courts below wrongly held that the above said documents are not available with respondent and also held as if the petition has been filed to protract the proceedings and therefore, prayed for to set aside the above said order passed by both Courts below.

9. Admittedly, the respondent herein filed a criminal complaint under Section 138 of the Negotiable Instrument Act, since the petitioner herein failed to pay the cheque amount in spite of necessary notice. The above said complaint was taken on file by the Judicial Magistrate and it is pending for trial. During the pendency of the above said criminal complaint, the petitioner herein, who is sole accused in the above said criminal complaint, filed a petition to produce certain documents under Section 91 Cr.P.C. The Magistrate also passed an order to produce the above said documents. Accordingly, the respondent herein produced only the available documents and he has not produce the remaining documents.

10. In the above said circumstances, the petitioner herein again filed a petition under Section 93 of the Civil Procedure Code, before the Magistrate Court to issue search warrant to collect the documents. The respondent herein specifically stated in the counter itself that the above said documents not available with him and further pointed out that the respondent has specifically deposed at the time of oral evidence as the above said documents not available with him. Therefore, from the averments made in the counter itself clearly revealed that the documents sought for by the petitioner not available with the respondent and the above said documents are only in the custody of the petitioner himself. As rightly held by both Courts below, the petitioner has filed the petition only with an intention to drag on the proceedings. Therefore I am of the considered view that there is no merits in this Criminal Original Petition and it is liable to dismissed.

11. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

vsg

-s/d-
Assistant Registrar(J)
Dt:27/3/2015
True Copy

Sub-Assistant Registrar

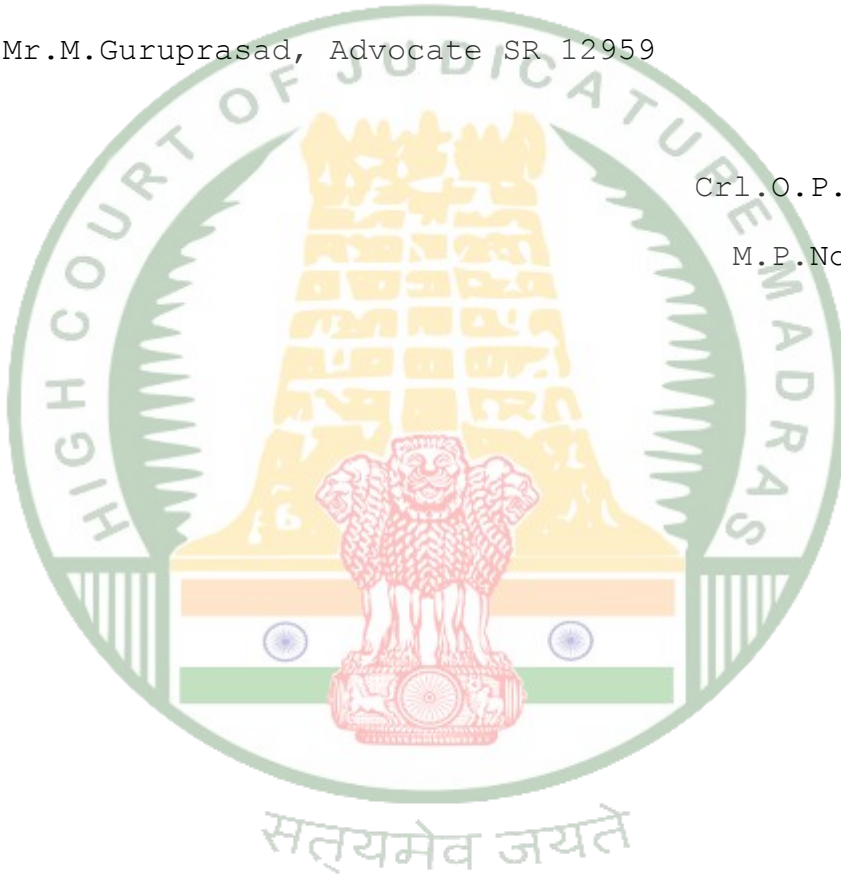
To

1. I Additional Sessions Judge, Erode.
2. do- thro' The Principal Sessions, Judge, Erode.
3. The Judicial Magistrate No.II, Erode.
4. -do- thro' The Chief Judicial Magistrate, Erode.

+ 1 cc to Mr.M.Guruprasad, Advocate SR 12959

rj(co)
prk31/3

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