

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.06.2016

Coram:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.10072 of 2016

and

Crl.MP.No.5354 of 2016

S.Rajesh Petitioner

Vs.

R.Gunasekaran Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to order dated 29.03.2016 made in Crl.M.P.No.311 of 2016 in S.T.C.No.199 of 2015 on the file of FTC-Ambattur, Chennai and quash the same.

For Petitioner : Mr.K.N.Nataraja

ORDER

This petition has been filed to call for the records relating to order dated 29.03.2016 made in Crl.M.P.No.311 of 2016 in S.T.C.No.199 of 2015 on the file of FTC-Ambattur, Chennai and quash the same.

2. It is the case of the complainant that on 27.11.2012, the accused urgently borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the complainant promising to return the amount and in discharge of said liability, the accused gave four cheques for a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) each dated 15.12.2014, 15.01.2015, 15.02.2015 and 15.03.2015 to the complainant. The complainant presented the cheque dated 15.02.2015 and the same was dishonoured. The complainant issued a statutory notice dated 26.02.2015 to the accused and since the accused did not make the payment, the complainant has lodged a private complaint in S.T.C.No.199/2015

for offence under Section 138 of the Negotiable Instruments Act against the accused, which is now pending before the learned Judicial Magistrate, (Fast Track Court), Ambattur.

3. During the course of trial, the complainant was examined in chief and he was also cross-examined. During the course of cross-examination of the complainant, the accused had put specific question to the complainant, as to how he gave the amount of Rs.10,00,000/- (Rupees Ten Lakhs only), for which, the complainant appears to have said that he had drawn the money from his account viz., Indian Bank, Nungambakkam Branch and from the account of his wife viz., State Bank of India, Nelson Manickkam Road Branch, Chennai.

4. During the course of argument, the accused has filed a petition in S.T.C.No.199 of 2015 in C.M.P.No.311 of 2016 under Section 91 Cr.P.C. for a direction to the complainant to produce Income Tax Returns for the Financial Year 2010-11 to 2014 - 15 and Bank statement since the year 2011. The complainant filed his counter. After hearing both sides, the trial Court partly allowed C.M.P. No. 311 of 2016 on 29.03.2016 rejecting the prayer of the accused to call for the Income Tax Returns and directing the complainant to produce the bank statement, aggrieved by which, the complainant is before this Court.

5. The learned counsel appearing for the complainant submitted that under Section 138 of the Negotiable Instrument Act, it is not open to the accused to make a roving enquiry. It is true that the Honourable Supreme Court, in the State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6183], has clearly held that Section 91 cannot be used for making roving or fishing enquiry. However, it has to be seen as to whether on the present facts and circumstances of this case, the order impugned is sustainable. It is the contention of the complainant that on 27.11.2012, he had given a sum of Rs.10,00,000/- to the accused, which is a huge amount. Under Section 139 of the Negotiable Instrument Act, a presumption is in favour of the complainant and burden is cast upon the accused, who has to disprove. In the light of the above, the accused appears to have called for the bank statement of the complainant, in the light of his clear evidence that he is ready and willing to produce the same.

In the interlocutory of this nature, this Court should not normally interfere unless the impugned order suffers from serious infirmity, resulting in injustice to the party. After all, a criminal trial is intended for arriving at a truth, which is beneficial for both parties. This Court does not find any serious infirmity in the order passed by the Court below.

Hence, the criminal original petition is dismissed as devoid of merits. Consequently, Connected Crl.MP.No.5354 of 2016 is closed.

sms

Sd/-
Assistant Registrar

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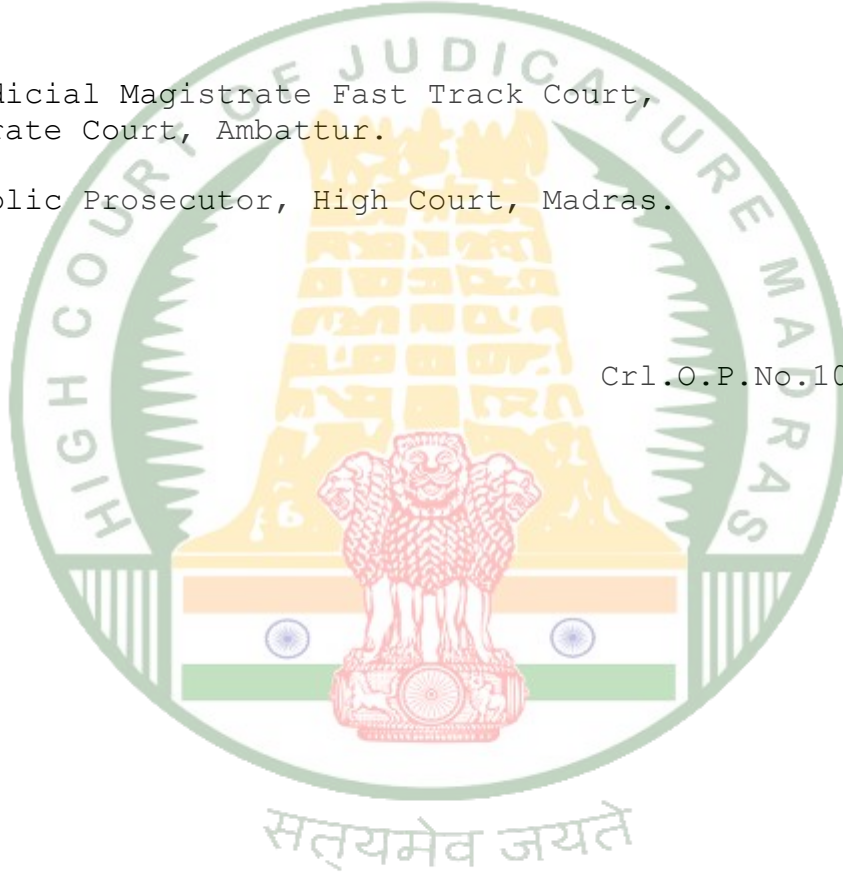
Sub Assistant Registrar

To

1. The Judicial Magistrate Fast Track Court,
Magistrate Court, Ambattur.
2. The Public Prosecutor, High Court, Madras.

KR/1/7/16

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