

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.Nos.1202 and 1203 of 2016

And

Crl.M.P.Nos.530 and 531 of 2016

Mr.A.Chidambaram ... Petitioner in both Crl.O.Ps.  
(Accused)

Vs.

Dr.S.Rajagopal ... Respondent in both Crl.O.Ps.  
(Complainant)

Common Prayer:

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order in Crl.M.P.Nos.3634 and 3632 of 2015 respectively, in C.C.No.9262 of 2007 dismissal order passed by the Hon'ble learned Judicial Metropolitan Magistrate, IV Fast Track, George Town dated 10.08.2015.

For Petitioner : Mr.R.Muniyapparaj

For Respondent : Mr.C.K.M.Appaji

COMMON ORDER

The petitioner has come forward with these petitions seeking to set aside the order passed in Crl.M.P.Nos.3634 and 3632 of 2015 respectively, in C.C.No.9262 of 2007 by the learned Judicial Metropolitan Magistrate, IV Fast Track, George Town dated 10.08.2015, wherein, the petitions filed under Section 91 of Cr.P.C. and under Section 45 of the Indian Evidence Act respectively, came to be dismissed.

2.Heard both sides.

3.The petitioner who is the accused in C.C.No.9262 of 2007 facing criminal case under Section 138 of the Negotiable Instruments Act has come forward with these petitions stating that the issuance of cheque is admitted, it has been

subsequently filled up and to ascertain the age of the ink, the document has to be sent for forensic department. Hence, he filed petition under Section 45 of the Indian Evidence Act, which was dismissed. To prove that the cheque has been issued only as a security and it was filled up subsequently, it is necessary to send the document for Forensic Department to ascertain the age of the ink. But the said factum was not considered by the Trial Court.

4. He also filed another petition under Section 91 of Cr.P.C. stating to prove that there is no notice under Section 138(b) of the Negotiable Instruments Act. The document mentioned in the petition is necessary to prove that the postal endorsement made in the averments are not genuine. That factum was not considered by the learned Trial Court. Hence, he prayed for allowing the petitions.

5. Resisting the same, the learned counsel for the respondent would submit that as per Section 91 of Cr.P.C., he is not entitled to send for document which belongs to Indian Postal Department. He further submitted that there is no mechanism available to ascertain the age of the ink. So, those facts are considered by the learned Trial Court and prayed for dismissal of the petitions.

6. Considering the rival submissions and on perusal of the typed set of papers it is known that the respondent as complainant filed complaint stating that the petitioner herein has borrowed various amounts on several dates by way of cheque to meet out his urgent business commitments and when the respondent demanded for discharge, the petitioner issued cheque which when presented for encashment returned with endorsement 'accounts closed'. Hence, he issued notice and that notice has also returned. Hence, he preferred the complaint.

7. The first limb of the argument is that he has not received statutory notice under Section 138(b) of the Negotiable Instruments Act and he has taken me to the page no.10 of the typed set of papers wherein, postal endorsement has been made. He further submitted that to ascertain the Rules, the Post Master have right to hold its records for how many days, but here in that it was stated from 22.03.2007 onwards he kept on pending with him till 02.04.2007, but it has been returned on 02.04.2007, but to show whether really the Post Man has gone there and taken steps to serve there, the documents are necessary to prove that the endorsement has been not made in accordance with rules.

8. At this juncture, it is appropriate to extract Sections 91 and 92 of Cr.P.C. which reads as follows:

"91. Summons to produce document or other thing -

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

92. Procedure as to letters and telegrams - (1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain

such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).”

9.If the Court is of the opinion, he can send for the document from the Postal Department and to prove no statutory notice was issued, an opportunity must be given to the accused. Hence, I am of the view that it is a fit case for giving direction to the Postal Department to produce documents which were called for in this petition i.e., the date on which the letter reached Ashok Nagar Branch and when it was returned back to the original addressee and the person who visited addressee if he had noted anything in the diary or book about the endorsement made by the Postman. So the reason assigned by the learned Magistrate for not send for document is un-sustainable and it is a fit case for allowing this petition and the learned Judicial Metropolitan Magistrate, IV Fast Track, George Town is directed to issue summons to the witness and produce document. The Criminal Original Petition in CrI.O.P.No.1202 of 2016 is allowed.

10.In respect of Section 45 of the Indian Evidence Act is concerned to send document for forensic department to ascertain the age of the writing he has given

- a.What is the age of writing?
  - b.Has the ink come from given inkpot?
  - c.Can the faded ink be restored?
  - d.Can the erased writing be read?
  - e.What is the age difference between the blue and black ink?
- All those things to be ascertained.

But admittedly, there is no mechanism to ascertain the age of the ink till now.

11.In such circumstances, the learned Trial Court has rightly considered the same and dismissed and that order does not warrant interference and that petition deserves to be dismissed and hence the Criminal Original Petition in CrI.O.P.No.1203 of 2016 is accordingly dismissed.

12.In the result, the Criminal Original Petition in CrI.O.P.No.1202 of 2016 is allowed and the learned Judicial Metropolitan Magistrate, IV Fast Track, George Town is directed to issue summons to the witness and produce document. The Criminal Original Petition in CrI.O.P.No.1203 of 2016 is

dismissed. Consequently, the connected miscellaneous petitions are also closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Metropolitan Magistrate,  
IV Fast Track, George Town, Chennai.

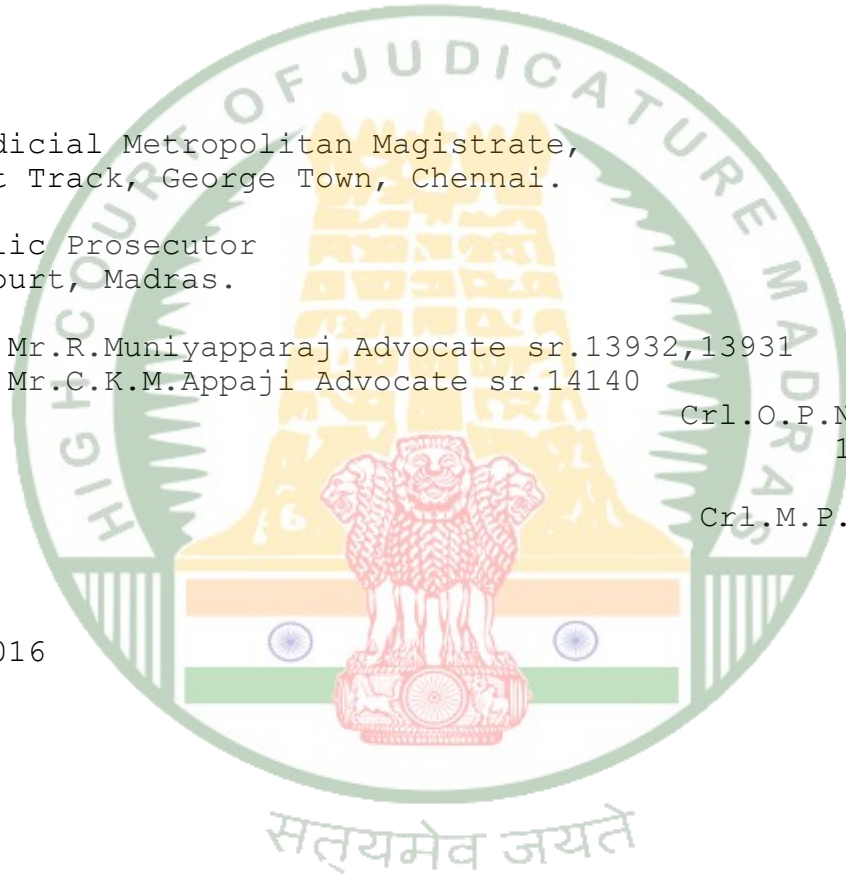
2.The Public Prosecutor  
High Court, Madras.

+2 ccs to Mr.R.Muniyapparaj Advocate sr.13932,13931

+2 ccs to Mr.C.K.M.Appaji Advocate sr.14140

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