

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.Nos.20191 and 20192 of 2016
Crl.M.P.9460 of 2016

T. Nandha Kumar ... Petitioner
in both Crl.OPs

S.Ramesh Vs
... Respondent
in both Crl.OPs

Prayer in Crl.OP.Nos.20191 & 20192 of 2016 :

Criminal Original Petitions filed under Section 482 of Cr.P.C., praying to set aside the orders dated 29.03.2016 made in C.M.P.Nos.1353 & 1354 of 2016, & in STC No.399 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode and set aside the same by allowing this Criminal Original Petitions.

For Petitioner : Ms.R.Renuka Devi

For Respondent : Mr.C. Emalias
Addl. Public Prosecutor

C O M M O N O R D E R

These petitions have been filed to set aside the orders dated 29.03.2016 made in C.M.P.Nos.1353 & 1354 of 2016, & in STC No.399 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode and set aside the same by allowing this Criminal Original Petitions.

2. Heard the learned counsel for the petitioner and the learned Addl. Public Prosecutor appearing for the State.

3. For the sake of convenience, will be referred to by their name.

4. It is the case of Ramesh, that Nandhakumar borrowed Rs.7.50 laksh (Rupees Seven Lakhs fifty thousand only) on 14.12.2014 and in discharge of the said liability, he has issued a post dated cheque dt.14.02.2015 for Rs.7.50 lakhs (Rupees Seven Lakhs fifty thousand only) and when the said cheque was presented, it was returned for "insufficiency of funds" on 17.02.2015.

5. Ramesh issued a statutory notice on 26.02.2015 under Section 138 of the Negotiable Instrument Act. Since Nanda kumar did not repay the amount, Ramesh has lodged a prosecution in STC No.399 of 2015, which is now pending on the file of the Fast Track Court, Judicial Magistrate-I, Erode against Nandhakumar. During trial, Ramesh examined himself as PW-1 and he was subjected to grilling cross examination by Nandhakumar. Thereafter, Nandhakumar was questioned under Section 313 Cr.PC. and when the matter was posted for the evidence of the defence, Nandhakumar filed application u/s 91 Cr.PC. in C.M.P.No.1353/16 and C.M.P.No.1354 of 2016 to re-call PW-1 for further cross examination.

6. The trial Court heard both sides, and by order dated 29.03.2016, dismissed the petitions, aggrieved by which Nandhakumar is before this Court, in these two petitions.

7. Learned Counsel for the petitioner submitted that the documents called for by Nandhakumar under Section 91 Cr.PC. are indeed relevant for the just decision of the case, inasmuch as Nandhakumar has to establish that the complainant has had business dealings with one SRP Tex.

8. This Court gave its anxious consideration to the submissions made by the learned Counsel for the petitioner.

9. On a reading of the cross examination of Ramesh, Nandhakumar had not taken defence that the cheque was not issued by him. He has taken a defence that Ramesh does not have the means to give the loan. He had further taken the defence that the impugned cheque, though executed by him, but was handed over by his father to Ramesh and that since his father had committed suicide on account of indebtedness, Ramesh has launched the prosecution to recover the amount.

10. In the light of this defence, it is to be seen whether the documents called for under Section 91 Cr.PC has any relevance. In the petition u/s 91 Cr.PC. Nandhakumar has catalogued eight documents relating to SRP Tex and Bank Accounts Of Punjab National Bank and Income Tax returns for the period 2014-2015 etc., Fundamentally, the petition itself does not disclose, how these eight documents are relating for the just decision of the case.

"In State of Orissa -Vs- Dabendranath Padhi
{(2004) AIR SCW 6813}"

11. The Supreme Court has held that a petition under Section 91 Cr.PC. cannot be filed for making a fishing enquiry. This Court, finds that the petitioner has not made out a prima facie case in CMP No.1353 of 2016 for summoning the documents enumerated therein under Section 91 Cr.PC. and therefore, the decision of the Trial Court does not warrant interference.

12. Since the petition in C.M.P.No.1353 of 2016 under Section 91 Cr.PC. has been dismissed by the Trial Court, it follows that the petition to recall PW-1 u/s. 311 Cr.PC. for the purpose of confronting him with the aforesaid documents should follow suit.

13. In the result, these petitions are dismissed. The Trial Court is directed to complete the trial within 3 months from the date of receipt of a copy of this order. Connected Miscellaneous Petition closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Fast Track-I Judicial Magistrate,
Erode.

2. -do- Through The Chief Judicial Magistrate, Erode.

3.The Public Prosecutor, High Court, Madras.

+ 2 ccs to Mr.N. Manokaran, Advocate Sr.51543, 51542

CRL.OP.Nos.20191 and 20192 of 2016

GJ(CO)
EU 28.09.16

सत्यमेव जयते

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