

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.06.2016
DELIVERED ON : 06 .06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.9122 of 2016 and Crl.M.P. No.4730 of 2016

Rev. John Samuel
S/o John Devaraj
Correspondent
C.S.I. Higher Secondary School
Trichy Road, Thuraiyur
Trichy District
Thuraiyur P.S. Limits

Petitioner/Accused

vs.

Dr. Graham Daniel
represented by his Power Agent
R. Sureshkumar
No.21/V Town Station Road
Mayiladuthurai Town
Mayiladuthurai P.S. Limits

Respondent/Complainant.

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the order dated 09.03.2016 in C.M.P. No.439 of 2016 in C.C. No.201 of 2013 on the file of the Fast Track Court Judicial Magistrate, Mayiladuthurai and set aside the same.

For petitioner Mr. S. Sarath Chandran
for M/s. K.M. Vijayan Associates

ORDER

This petition has been filed to call for the records of the order dated 09.03.2016 in C.M.P. No.439 of 2016 in C.C. No.201 of 2013 on the file of the Judicial Magistrate (Fast Track Court), Mayiladuthurai and set aside the same.

2 Heard the learned counsel appearing for the petitioner.

3 For the sake of convenience, the parties will be referred to as the complainant and accused.

4 It is the case of the complainant that the accused had borrowed a sum of Rs.3 lakhs and had executed a promissory note on 27.01.2013. Towards the said debt, the accused gave a cheque dated 25.07.2013 for a sum of Rs. 3 lakhs, which, when presented by the complainant, got dishonoured. Pursuant thereto, the complainant issued a statutory notice dated 01.08.2013 to the accused. The accused received the notice, but, did not give any reply to the same. Since the accused did not make payment, the complainant initiated prosecution in C.C. No.201 of 2013 against the former for an offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") before the Judicial Magistrate Court, Mayiladuthurai (Fast Track). The Power Agent was examined as P.W.1 and was subjected to cross examination by the accused. Likewise, the petitioner was examined as P.W.2 and he was also cross examined by the accused. After the closure of evidence on behalf of the complainant, five witnesses were examined on behalf of the accused, which included Geetha Daniel, who is the wife of the complainant. Thereafter, the accused filed an application in C.M.P. No.439 of 2016 under Section 91, Cr.P.C. for a direction to the complainant to produce the following documents:

- 1 Partnership Deed of G.D. Hospital certified copy
- 2 Minute Book of the Hospital
- 3 Cash Book of the hospital for the year 1996 to 2012

5 The Trial Court heard both sides and by the order under assail, dismissed the petition aggrieved by which, the accused is before this Court.

6 The learned counsel for the accused strenuously contended that the accused had undergone treatment in G.D. Hospital run by the complainant; that he had paid money for the treatment and that he had not borrowed any money, as alleged by the complainant. The learned counsel further submitted that in the cross examination of P.W.1, he has categorically stated that the accounts are maintained in the hospital. Therefore, in the light of this admission, it is contended by the learned counsel for the accused that the aforesaid records are essential for the just decision of the case.

7 This Court gave its anxious consideration to the submission made by the learned counsel for the accused and also perused the order under assail.

8 It may be essential to state here that the accused did not choose to give any reply to the statutory notice that was issued by the complainant under Section 138 of the NI Act. Even according to the complainant, the accused had borrowed Rs.3 lakhs

on a promissory note dated 27.01.2013 and in discharge of the said debt, he had issued the cheque in question, which got dishonoured.

9 On a reading of the petition filed by the accused under Section 91, Cr.P.C., it is luculent that he has not even stated as to how the aforesaid documents are relevant and essential for determining the issues in the case. The Supreme Court, in Debendranath Padi vs. State of Orissa [(2003) 2 SCC 711], has held in unequivocal terms that Section 91, Cr.P.C. cannot be invoked for making a roving or fishing enquiry. Even in the cross examination of P.W.1, the accused has not even suggested that the sum of Rs.3 lakhs was paid towards hospital dues. Therefore, this Court does not find any infirmity, much less any serious infirmity, in the order of the Trial Court.

In the result, this Criminal Original Petition is devoid of merits and the same stands dismissed. Connected, Crl.M.P. is closed.

cad

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1 The Judicial Magistrate
Fast Track Court
Mayiladuthurai
- 2 The Public Prosecutor
High Court of Madras
Chennai 600 104

+ 1 cc to M/s.K.M.Vijayan, Advocate SR 30702

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