



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04 .05.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD)No.7154 of 2016

M.Prince

..Petitioner/Accused.

Vs

A.Sasikumar

..Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the orders dated 24.02.2016 in Crl.M.P.No.2104 of 2015 in STC No.82 of 2015 on the file of the Judicial Magistrate, Fast Track Court (Magisterial level), Uthammapalayam and to set aside the same and allow the criminal original petition.

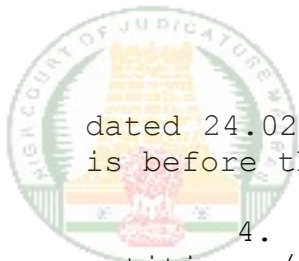
For Petitioner : Mr.P.Ganapathi Subramanian

Orders Reserved on : 29.04.2016Pronounced on : 04.05.2016O R D E R

This petition has been filed to set aside the case in Crl.M.P.No.2104 of 2015 in STC No.82 of 2015 on the file of the Judicial Magistrate, Fast Track Court (Magisterial level), Uthammapalayam.

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

3. It is the case of the complainant that the accused was into real estate business and had created a lay out in the name of Royal City, in which, he offered to sell 5 plots to the complainant. In this connection, on 18.02.2014, the complainant has given Rs.10 lakhs to the accused on the promise that the accused will convey plots to the complainant within a month. It is the further case of the complainant that the accused gave a post dated cheque for Rs.10 lakhs on the agreement that if the accused fails to convey the property within a month, the complainant can present the cheque and encash the amount. Since the accused failed to convey the lands, the complainant presented the cheque and the same was dishonoured. The complainant issued a statutory notice dated 02.04.2014 and since the accused did not comply with the demand, the complainant filed a private complaint before the jurisdictional Magistrate for the offence under Section 138 of the Negotiable Instruments Act against the accused and the said complaint is now pending in STC No.55/2015 on the file of the Judicial Magistrate, Fast Track Court, Magisterial Level, Uthammapalayam. (In the impugned order, the learned Judicial Magistrate, Fast Track Court, Uthammapalayam has stated the case number as STC No.55/2015, but whereas in the petition, it is stated as STC No.82/2015). After receipt of summons and questioning of the accused, the complainant examined himself as P.W.1 and he was cross examined by the accused. Thereafter, the accused filed Crl.M.P.No.2104/2015 under Section 91 Cr.P.C. for a direction to the complainant to produce his bank statement of accounts before the Court. The complainant filed his counter and the learned Magistrate, by order



dated 24.02.2016, dismissed the petition. Challenging which, the accused is before this Court.

4. Mr. Ganapathi Subramanian, learned counsel for the petitioner/accused, submitted that the complainant has admitted in the cross examination that the sum of Rs.10 lakhs is a very huge amount and that he has withdrawn the amount from the bank and has kept it in his house, which was handed over to the accused. It is the case of the accused that complainant has no means to pay Rs.10 lakhs.

5. The learned counsel for the petitioner/accused placed heavy reliance upon the judgment of this Court in Madras Sea Food Agency v. M/s.RDJ Sea Foods reported in 2010 (3) MWN (Cri) DCC 142 and submitted that in similar circumstances, this Court has allowed the plea of the accused under Section 91 of Cr.P.C.

6. This Court gave its anxious consideration to the submissions made by the learned counsel for the accused and also perused the records.

7. A petition under Section 91 Cr.P.C., cannot be filed for making a fishing and roving enquiry, as held by the Supreme Court in State of Orissa v. Devendranath Pathi reported in (2004) AIR SCW 6813. The trial Court while dismissing the petition has observed as follows:

"..... The petitioner/accused had taken a stand that he had not received any amount from the complainant and the complainant has no capacity to pay the cheque amount. Considering the fact and circumstance of this case, I am of the considered view that if the petitioner/accused supposed to disprove the case of the complainant, it is open to him to call upon the concerned bank with whom the complainant had a account and as such this petition is liable to be dismissed."

From the above, it is clear that the trial Court has not completely shut all opportunities to the accused.

8. In view of the above, this petition is devoid of merits and accordingly, the same is dismissed.

Sd/
Vacation Officer.

/True Copy/

Sub Assistant Registrar.

To

1.The Judicial Magistrate, Fast Track Court (Magisterial level),
Uthamapalayam

2.The Additional Public Prosecutor, Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P. (MD) No. 7154 of 2016
04.05.2016