

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM

THE HONOURABLE DR.JUSTICE.S.VIMALA

Crl.R.C.Nos.989, 1003, 1004, 1005, 1029 and 1092 of 2017
and
Crl.M.P.Nos.9327, 9491, 9492, 9493, 9673 and 10223 of 2017

CRL.R.C.NO.989 OF 2017

ABDUR RAHMAN ... REVISION PETITIONER / ACCUSED

VS

ADAM MOHOMED SAIT ... RESPONDENT / COMPLAINANT

CRL.RC.NO.1003/2017

ABDUR RAHAMAN ... ACCUSED/PETITIONER

VS

FAHAD ADAM SAIT ... RESPONDENT/COMPLAINANT

REP.BY POWER AGENT ADAM MOHAMED SAIT

CRL.RC.1004

ABDUR RAHMAN ... PETITIONER/ACCUSED

VS

SARAH ADAM SAIT ... RESPONDENT/COMPLAINANT

REP.BY POWER AGENT ADAM MOHAMED SAIT

CRL.RC.1005/17

ABDUR RAHMAN ... PETITIONER/ACCUSED

VS

NAUSHEEN ADAM SAIT ... RESPONDENT/COMPLAINANT

REP.BY POWER AGENT ADAM MOHAMED SAIT

CRL.RC.1029/2017

ABDUR RAHAMAN

... PETITIONER/ACCUSED
VS

ASAD ADAM SAIT

... RESPONDENT/COMPLAINANT

CRL.1092/2017

ABDUR RAHMAN

... PETITIONER / ACCUSED

VS

ADAM MOHOMED SAIT

... RESPONDENT / COMPLAINANT

Criminal Revision Case filed under Section 397 r/w. Section 401 Cr.P.C, praying to call for records and set aside the order dated 19.06.2017, passed in M.P.No.1170 of 2017, MP.1173/17 in CC 1744/12, MP.1174/17 in CC 1745/12, MP.1175/17 in CC.NO.1746/12, 1172/17 in CC.NO.1743/12, MP.1171/17 in CC.NO.1742/12 in C.C.No.1741 of 2012, pending on the file of the learned Metropolitan Magistrate Court (Fast Track-II), Egmore at Allikulam, Chennai.

For Petitioners: M/sA.S.Vijayaraghavan
For Respondent : Adam Mohomed Sait
Party-in-person

COMMON ORDER

The revision petitioner is an accused in C.C.Nos.1741 to 1746 of 2012 (6 cases alleging offence under Section 138 of the Negotiable Instruments Act) (as amended by Act 66 of 1988) on the file of the XIV Metropolitan Magistrate, Egmore, Chennai. In each of the petitions, the accused filed petition seeking to issue summons to the cited witnesses as defence on his side. In those cases, Adam Mohammed Sait, who is the complainant in one case and Power of Attorney of the other complainants, raised objections to those petitions on the ground that the petition under Section 254(1) Cr.P.C., has been filed only to protract the proceedings. After hearing both sides, the learned Magistrate dismissed all the petitions. Challenging the same, these Revision Petitions have been filed. As the issues raised in all the cases are the same, common order is passed.

2. The petitions under Section 254 of Cr.P.C., were filed seeking issuance of summons to three witnesses, for the purpose being examined as defence witnesses. The witnesses are a) the Branch Manager, Royal Bank of Scotland, Harrington Road, Chetpet

Branch, Chennai - 600 007; b) The Branch Manager, Bank of Baroda, Egmore Branch, Chennai - 600 008; c) Mr.V.Ramalingam, Advocate of Notary, 439, Additional Law Chambers, High Court, Chennai - 600 104.

3. The petitions were dismissed by the trial Court by an order dated 19.06.2017 on the ground that the accused/petitioners herein had not disclosed the reasons for examination of witnesses as defence witnesses. The justifiability of the dismissal order is under challenge in these revision petitions.

4. Brief facts are essential in order to understand the justification for examining the cited witnesses on the side of the accused:

The petitioner/accused is a real estate promoter/builder by profession. Towards his discharging financial liability, he conveyed an apartment in favour of the respondents, which were under construction. As there was delay in completing the construction, the complaint was preferred and thereafter, a case in Cr.No.574 of 2008 has also been registered. Pending criminal investigation, a Memorandum of Understanding was arrived at between the parties on 15.10.2008, whereby, the accused was required to pay a sum of Rs.50 lakhs to the respondents within a span of five months and the respondents were required to cancel the sale deed. Pursuant to the Memorandum of Understanding, the accused paid the sum of Rs.15 lakhs on 04.08.2010. Towards payment of the remaining amount, the petitioner issued a cheque dated 15.06.2011 drawn on Bank of Baroda, Egmore Branch, for a sum of Rs.12,39,600/-. When this cheque was presented, it got dishonoured. After following the legal procedure, the complaints were filed by the complainant herein as well as by others in his family.

The dismissal of the petitions filed by the petitioner/accused was on the following grounds:

(i) the accused has not disclosed any reasons for issuance of summons to the witnesses;

(ii) the accused did not satisfy the Court that the proposed witnesses are material and that their evidence is relevant to the facts of this case;

Giving a finding that it is not a matter of right for the accused to get the witnesses summoned (without even spelling out the reasons and relevancy), the petitions were dismissed.

5. In order to appreciate the grounds of revision, it is necessary to consider the relevant provision under Section 254 Cr.P.C., which reads as under:

"254. Procedure when not convicted.

(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court."

6. Relying upon Section 254 Cr.P.C., it is contended by the learned counsel appearing for the accused that the right of the accused to examine anybody as a defence witness is purely the prerogative of the accused and that it cannot be curtailed by the Court. In other words, the contention is that it is for the accused to decide, who be the witnesses and it is not for the Court to decide. The crux of the contention is that it is what the accused, who thinks fit that matters in deciding the witnesses to be examined.

7. The contentions taken are on the extreme end. No doubt, the accused will be the competent person to decide a) what is to be proved; b) what is the nature of the evidence to be adduced; c) through whom, the evidence has to be let in. But, at the same time, on the garb of proving the case the accused cannot take the Court/complainant for a ride and continue to examine the witnesses whether relevant or not. There cannot be a hidden agenda towards protracting the proceedings. The Court cannot function and it is not expected to function like an automatic recording machine and the Court is expected to have control over the proceedings in order to ensure that the trial being conducted is fair to both sides. The Court is expected to consider the merits of the case and to decide whether the examination of witness is with a purpose of prolonging the proceedings or with a view of prove the case of the party calling the witness. This role is very zealous and it cannot be discarded by the Magistrate. Only because of the mistaken notion on the part of the accused regarding his right of examination of witnesses, the petitions have resulted in dismissal.

8. Irrespective of the stand taken by the accused, it is for the Court to have elicited the purpose for which the witnesses are sought to be examined and then to have decided, whether the examination of those witnesses should be permitted or not.

9. The party-in-person appearing for the respondent would submit that the Banker of the complainant is not in existence and the said Bank has been amalgamated with another Bank and therefore, summon cannot be issued to L.W.1 mentioned in the petition. Several E-mails sent by the accused to the complainant are relied upon to show that the transaction should have been a genuine transaction.

10. The learned Magistrate has dealt with those objections and in respect of the first objection, the learned Magistrate has stated that it is for the accused to find out the correct Banker against whom summons have to be issued. Even this step may not be necessary as the examination of the Banker is not going to improve the case of the defence as the presentation of the cheque, return of the same on the ground of insufficiency of funds are not under dispute. It appears that there is a change in the name of the Bank in one of the cheque returned. But, it is an admitted fact on the side of the complainant that the name of ABN Amro Bank has been renamed as Royal Bank of Scotland. Therefore, that issue do not require any clarification.

11. The other witness to be examined is with reference to the Memorandum of Understanding. It is the case of the accused that the payment to be made has a link with the Memorandum of Understanding. The initial presumption is available in favour of the complainant. Once evidence is let in towards invoking the presumption, then the burden is shifted on the part of the accused to rebut the presumption. Therefore, towards rebutting the presumption, the accused must be given an opportunity to examine the witness to speak about the Memorandum of Understanding. It is stated that the Memorandum of Understanding has a link with the cheque issued. The apprehension expressed by the respondent is that the accused may protract the proceedings. This can be taken care of by imposing appropriate conditions.

12. The accused is permitted to examine witness No.3. The learned counsel appearing for the accused is expected to ensure the completion of the examination of witness No.3 within a period of two weeks from the date of receipt of a copy of the order. The complainant also shall complete the cross examination on the date of chief examination without asking for any adjournment. The learned Magistrate shall issue summons to witness No.3 for examination, subject to availability of time any day within a period of one week from the date of receipt of a copy of the order or from the date of production of the order

by any of the parties.

13. With these stipulations, the revision petitions are partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

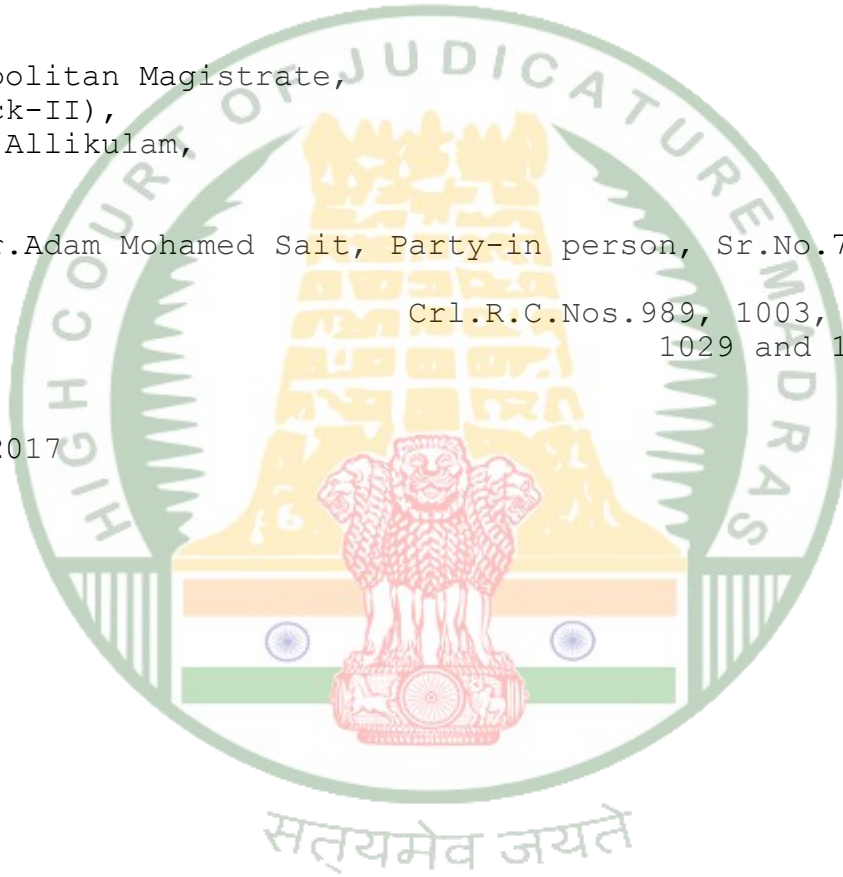
To

The Metropolitan Magistrate,
(Fast Track-II),
Egmore at Allikulam,
Chennai.

+1cc to Mr.Adam Mohamed Sait, Party-in person, Sr.No.79772/17

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VGII(CO)
NR 10/11/2017



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