

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 21.03.2017

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.27750 of 2011

R.Sundar Rajan

.. Petitioner/Accused

Vs

P.G.Ramesh Babu

.. Respondent/Complainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.M.P.No.990 of 2011 in C.C.No.4045 of 2009 and to set aside dated 10.10.2011 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.V.Raghavachari
for M/s.S.N.Sudharsan

For Respondent : Mr.R.Ganesh Kumar

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.M.P.No.990 of 2011 in C.C.No.4045 of 2009 dated 10.10.2011 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. The respondent filed a private complaint for the offences under Section 138 read with Section 142 of the Negotiable Instruments Act and the same was taken cognizance by the learned XIV Metropolitan Magistrate, Egmore, Chennai in C.C.No.4045 of 2009.

3. Pending C.C.No.4045 of 2009, the petitioner filed petition being Crl.M.P.No.990 of 2011 under Section 91 of Cr.P.C. seeking to call for the documents available in O.S.No.2314 of 2005 on the file of learned City Civil Court, Chennai; O.S.No.7412 of 2009 on the file of the learned City Civil Court, Chennai and C.S.No.946 of 2008 on the file of this Court for just decision and also to prove the case of the defence.

4. In his petition, the petitioner alleged that the respondent has no locus standi to file and/or prosecute

proceedings, as the power granted by the erstwhile principals was revoked by them by a deed of revocation and the same was upheld by an adjudication made by the learned XVIII Assistant Judge, City Civil Court, Chennai in O.S.No.2314 of 2005, wherein the complainant was one of the defendants and the deed of revocation was also marked as document. Since the power of attorney appointing the complainant was cancelled and as a result, the complainant has no locus standi to file any case against the petitioner and to substantiate the above fact, it was necessary to call for the records in O.S.No.2314 of 2005 on the file of learned XVIII Assistant Judge, City Civil Court, Chennai. It is also alleged that the records available in C.S.No.946 of 2008 i.e., plaint, sale agreement and other basic documents are necessary to challenge the case of the complainant and to rebut the presumption under Section 139 of the Negotiable Instruments Act. Hence, the petitioner has filed the petition.

5. Resisting the petition, the respondent filed counter stating that the petitioner has not stated anything substantially to prove that the documents were necessary for deciding the case and nothing has been stated to satisfy and justify to call for records. It is stated that the petitioner had not stated the relevancy of producing those documents in Court. The petitioner had made a general statement with a prayer to call for the documents in the suits. But nothing had been stated that what are all the documents required and that in what way the documents were relevant for arriving at a just decision in the case. It is also stated that the petition has been filed with an ulterior intention to protract the proceedings. Hence, prayed for dismissal of the petition.

6. Upon consideration of the rival submissions, the learned Magistrate dismissed the petition. Aggrieved by the same, the petitioner has filed the present Criminal Original Petition.

7. Assailing the impugned order, the learned counsel for the petitioner submitted that the respondent has no locus standi to file the complaint, as the power of attorney in his favour had been revoked. He would contend that the learned Magistrate committed grave error in rejecting the petition holding that the petitioner can get the certified copy of the revocation of power of attorney marked as document in O.S.No.2314 of 2005 and failed to note that there is no provision for third party who is not a party to the suit cannot obtain a certified copy.

8. The learned counsel then contended that the learned Magistrate failed to note the power under Section 91 of Cr.P.C. are wide and unlimited and what is really left to be considered is the necessity and desirability of calling the records for vindicating the defence of the petitioner. The learned counsel

further submitted that the complainant had admitted in his evidence that under the sale agreement with the purchaser, he had received Rs.65 lakhs by cash which vindicate the stand of the accused that he did not receive any amount. The agreement of sale filed into Court in C.S.No.946 of 2011 is required to prove that the complainant had received the sale consideration and no amount was paid to the petitioner. Hence, prayed for setting aside the order of the learned Magistrate.

9. Reiterating the findings of the learned Magistrate, the learned counsel for the respondent/complainant submitted that the petitioner has not stated the relevancy of producing those documents in Court and the petition of the petitioner silent what are all the documents required to be produced. He would submit that upon analysis of the materials, the learned Magistrate dismissed the petition and no grounds have been made out to interfere with the order of the learned Magistrate and prayed for dismissal of the revision.

10. I have considered the submissions made by the learned counsel on either side and also perused the materials available on record.

11. The grievance of the petitioner is that in order to prove his defence in C.C.No.4045 of 2009 initiated against him by the respondent, it was necessary to call for the records in O.S.No.2314 of 2005, O.S.No.7412 of 2009 pending on the file of the learned City Civil Court, Chennai and the suit in C.S.No.946 of 2008 pending on the file of this Court.

12. Section 91 of Cr.P.C. provides:

"(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, 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."

13. In the case on hand, the petitioner is challenging his liability and also locus standi of the respondent to file and prosecute the C.C.No.4045 of 2009, as he does not have power of attorney to proceed further. It is stated by the petitioner that in O.S.No.2314 of 2005 on the file of the learned City Civil Court, Chennai, the power given in favour of the respondent was revoked. The respondent was arrayed as first defendant in the said suit.

14. The filing of the suit being O.S.No.2314 of 2005 has not been denied by the respondent. Also the filing of the suit in O.S.No.7412 of 2009 on the file of the learned City Civil Court, Chennai by the respondent and the suit in C.S.No.946 of 2008 pending on the file of this Court have also not been denied by the respondent.

15. The petitioner has filed the petition under Section 91 of Cr.P.C. when the matter was listed for defence side evidence. On a perusal of the evidence of the respondent, particularly, cross-examination of respondent, he had admitted the suits referred to above.

16. A perusal of the provisions of Section 91 of Cr.P.C. discloses that this Section confers power on the Court to summon any document, if the Court finds that the summoning of such a document is necessary or desirable in the interests of justice. The word "whenever" with which Section 91 begins, indicates that the Court is empowered to do so whenever the Court finds it necessary or desirable to act upon that provision irrespective of the stage.

17. It is settled law that summoning of document is purely a matter concerned with the discretion of the trial Court. But, the discretion shall be exercised properly and judiciously. In other words, the trial Court must satisfy itself whether the document on which the accused seeks to rely has a bearing upon or is irrelevant to the case. If upon satisfying itself that the document has no bearing, the trial Court is well within its powers to decline the prayer and the same can be deemed that it has exercised its discretion judiciously. It is also held that while exercising this power, the trial Court should not indulge in fishing or roving enquiry. In the case on hand, in order to prove his defence, the petitioner has filed the petition to call for the records and not otherwise.

18. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the Section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 of Cr.P.C. at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage.

19. Insofar as the accused is concerned, his entitlement to seek order under Section 91 of Cr.P.C. would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. As stated supra, the petitioner has filed the petition under Section 91 of Cr.P.C. when the matter was listed for defence side evidence.

20. Section 91(1) of the Code states that 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. The language of section 91(1) of the Code is wide enough and it gives the court trying the case to summon any document if it considers that such document is necessary or desirable for the purpose of trial.

21. The contention of the petitioner that the respondent has no locus standi to file the complaint cannot be decided in this petition and the same would be decided at the time of trial. However, the petitioner has rightly invoked the provision under Section 91 of Cr.P.C. and the learned Magistrate erred in dismissing the petition. No prejudice would be caused to the respondent, if those documents were called for. On the other hand, if the documents/records were not called for, much hardship would be caused to the petitioner. In the aforesaid circumstances, the order of the learned Magistrate is liable to be set aside.

22. However, since the entire procedure specified in the

Code is based on the principle of justice and fairness and one of the fundamental principles of legal jurisprudence is that a person accused of any offence should be given fair and equal chance to be heard and defend himself, I direct the court below to give a copy of the relevant documents called for to the petitioner so that he may also be aware of the contents and if they are used in evidence, he may defend himself properly.

23. In the result, the Criminal Original Petition is allowed and the order dated 10.10.2011 passed in Crl.M.P.No.990 of 2011 in C.C.No.4045 of 2009 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai is set aside. While calling for the records/documents, the petitioner has to adhere the procedure. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The XIV Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.N.Sudharsan, Advocate, S.R.No.18103

CRL.OP.No.27750 of 2011

rrs 28/11/2018

सत्यमेव जयते

WEB COPY