

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 05.10.2017****CORAM****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN****Crl.O.P No.3487 of 2011**

V.Natarajan

... Petitioner

vs.

R.J.B.Leoraj

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, against the order passed in CMP.No.5600 of 2010 in STC.No.195 of 2009, on the file of the learned Judicial Magistrate No.III, Coimbatore, dated 02.11.2010.

For Petitioner : Mr.C.Deivasigamani

For Respondent : Mr.B.Nedunchezhiyan

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to set aside the order passed in C.M.P.No.5600 of 2010 in STC No.195 of 2003 on the file of the Judicial Magistrate No.III, Coimbatore dated 02.11.2010.

2.The case of the petitioner is that he is facing a trial for an offence under Section 138 of Negotiable Instruments Act (hereinafter referred as 'the act') in S.T.C.No.195 of 2009 on the file of Judicial Magistrate III, Coimbatore filed by the respondent herein/complainant.

3.In the said case the petitioner required some vital documents to be produced before the Trial Court, so as to prove his innocence. Therefore he filed an application in C.M.P.No.5600 of 2010 under Section 91, r/w 254(1) and 2 of Cr.P.C praying for the production of the following documents namely:

1. Income tax return and the connected account book relating to the year 1998 to 30.06.2009 with form No.16 issued by the C.D.C.C Bank.
2. Statement of S.B. Account No.5300 District Central Co.op Bank, Head Office, from 01.09.1999 to 30.06.2005.
3. Particulars of Cheque Book issued to the complainant from 01.01.1999 to 30.07.2005.
4. The record showing the branch at which complainant worked on 04.07.2005.
5. The diary of the year 1997 maintained by the complainant.
6. Law Book of C.D.C.C Bank

4. Whereas on misconception of law and fact the above application in C.M.P.No.5600 of 2010 came to be dismissed by the Learned Judicial Magistrate vide the impugned order herein dated 2.11.2010, which is warranted interference by this Court. Therefore the present Criminal Original Petition.

5. I heard Mr.C.Deivasigamani, learned counsel appearing for the petitioner and Mr.B.Nedunchezhiyan, learned counsel appearing for the respondent and perused the entire records.

6. The learned counsel for the petitioner would submit that since the production of the above referred documents was indispensable for the petitioner to falsify the respondent's case, so as to prove his innocence, the above application was filed by the petitioner for production of such documents. Whereas, on a mechanical approach besides on misconceiving law and fact involved in the case, the trial Court has dismissed the application.

7. Per contra, the learned counsel for the respondent would submit that the above application made by the petitioner is an abuse of process

of law only to protract the case. The respondent does not maintain any sort of dairies, as sought for production by the petitioner. The respondent have already filed his income tax return for the year 2003–2007 for a period of 6 years before the trial Court, whereas as per the income tax law, the Income Tax returns have to be maintained for 6 years and hence the same was filed before the trial Court.

8. In so far as the other documents in Serial Nos. 2 to 6, those documents are the documents of the CDCC Bank Limited and the same is not under the possession of this respondent.

9. Hearing upon the rival submissions and on perusal of the typed set of papers, this Court noticed that the above application is being filed by the petitioner even without stating as to whom is in possession or in charge of the above documents and as to whom is responsible for production of such documents. Absolutely there is no say as to the custodian and as to where the documents are.

10. For better appreciation the entire petition is extracted hereunder:

“1. Income tax return and the connected account book relating to

the year 1998 to 30.06.2009 with form No.16 issued by the C.D.C.C Bank.

2. Statement of S.B. Account No.5300 District Central Co.op Bank, Head Office, from 01.09.1999 to 30.06.2005.

3. Particulars of Cheque Book issued to the complainant from 01.01.1999 to 30.07.2005.

4. The record showing the branch at which complainant worked on 04.07.2005.

5. The diary of the year 1997 maintained by the complainant.

6. Law Book of C.D.C.C Bank"

11.Excepting the above extract there is no single averment with regard to the purpose or the corresponding bearing of such documents relied on by the petitioner. In the above factual background that there is a specific denial by the respondent stating that there is no any diary maintained by the respondent as mentioned in Serial No.5, besides that there is no prima facie material put forth by the petitioner to satisfy the trial Court to pass an order under Sections 91 r/w 254 (1) and (2) of Cr.P.C. It is needless to say that summoning of document is purely a matter concerned with the discretion of the trial Court and the same is to be exercised properly and judicially. Only after satisfying itself as to

whether the document on which the accused seeks to rely has a bearing upon or is irrelevant to the case, the trial Court is supposed to summon for production of such documents.

12. In this context it would be relevant to look into a decision of this Court made in the matter of ***M. Swaminathan v. S. Gunasekar*** reported in ***2002 (1) MWN (cr.) DCC (Mad.) 19***, wherein it was held as follows "It is clear that under Section 139 of the NI Act, that presumption would arise once execution of the cheque has been admitted by the accused. This presumption should be rebutted by the accused either by showing some materials as found in the cross-examination of the witnesses by the prosecution or by examining the defense witnesses and some other documents. In order to rebut the presumption, the accused cannot request the Court, to compel the complainant to produce some documents which are not available with the complainant."

13. In the case on hand admittedly there is no justification or reasons laid by the accused to satisfy the trial Court, wherefore this Court is of the opinion that the above application is devoid of merits, utilized as a protracting tool and hence was rightly dismissed by the trial Court. Therefore the impugned order does not suffer from any material irregularity and does not require any interference by this Court.

14.In the view of the fore going reasons, this Criminal Original Petition fails and accordingly the same is hereby dismissed.

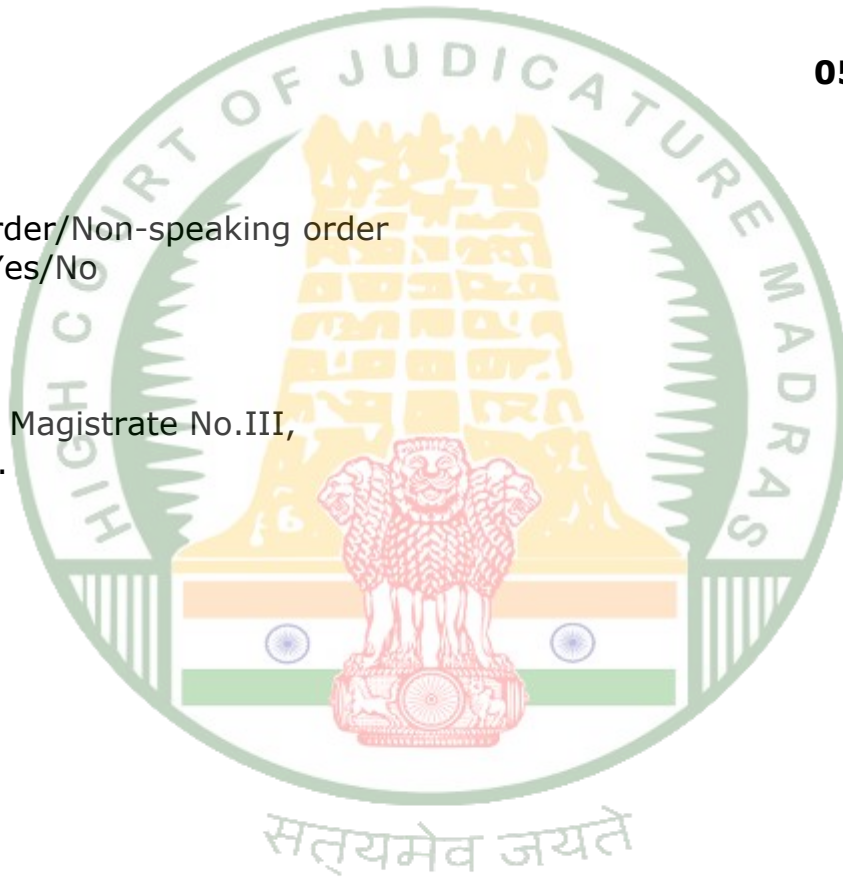
05.10.2017

vs

Speaking order/Non-speaking order
Index : Yes/No

To

The Judicial Magistrate No.III,
Coimbatore.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.3487 of 2011**

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