

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.25354 of 2009
and
M.P.No.1 of 2009**

Suresh Kumar D.Kochar

... Petitioner

vs.

1.A.Mohamed Yasin

2.Sameer Yasin

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order dated 13.10.2009 passed in M.P.No.751 of 2009 in CC No.1226 of 2008, on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and set aside the same.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.Y.Mohamed Ghouse
(No Appearance)

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to set aside the order passed in M.P.No.751 of 2009 in CC No.1226 of 2008 on the file of the VIII Metropolitan Magistrate, George Town, Chennai, dated 13.10.2009.

2.The case of the petitioner is that he filed a private complaint against the respondents herein for an offence under Section 138 of Negotiable Instruments Act (hereinafter referred as 'the act') in CC No.1226 of 2008 on the file of the learned VIII Metropolitan Magistrate, George Town and the trial has been commenced in the said case.

3.In the said case the respondents herein required some vital documents to be produced before the Trial Court, so as to prove his innocence. Therefore, they filed an application in M.P.No.751 of 2009 under Section 91 of Cr.P.C praying for the production of the following documents from the complainant namely:

1.Statement of Accounts from the year the year 1994 to 1996.

2.Income tax Assessment orders pertaining to the year

01.01.1995 to 01.01.1996.

3. Copy of Complaint dated 23.09.2005 given to commissioner of Police, Egmore, Chennai and undertaking letter given by one Mr. Dhanraj Kochar to Asst commissioner of Police, Pulianthope.

4. Certified copy of FIR and Complaint filed before the CCB in Cr.No.570 of 2006.

4. Whereas on misconception of law and fact the above application in M.P.No.751 of 2009 came to be partly allowed by the learned Magistrate vide the impugned order herein dated 13.10.2009. Against which the present Criminal Original Petition is filed by the petitioner herein/complainant.

5. I heard Mr.R.Bharath Kumar, learned counsel appearing for the petitioner and perused the entire records. There was no representation on behalf of the respondents.

6. The learned counsel for the petitioner would submit that the above application made by the respondents herein is an abuse of process of law only to protract the case. Whereas as per the Income Tax Law, the

Income Tax returns have to be maintained for 6 years and hence the petitioner is not in possession of the same.

7.Per contra, the learned counsel for the respondents would submit that since the production of the above referred documents was indispensable for the respondents to falsify the respondent's case, so as to prove their 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 erroneously allowed the application partly which is warranting interference by this Court.

8.In so far as the other documents are concerned, it is not under the possession of the petitioner herein and the respondents should have posses the same, Documents in S.Nos.1 and 2 are exclusively pertaining to the petitioner.

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9.Hearing upon the rival submissions and on perusal of the typed set of papers, this Court notice that the petitioner / complainant has deposed that he possess documents in S.Nos.1 and 2, whereas the other two documents in S.Nos.3 and 4 are the Complaint lodged by the petitioner herein and the corresponding FIR registered on the complaint of

petitioner. Therefore definitely petitioner may not be having the documents in S.Nos.3 and 4.

10.Besides, that there is no prima facie material put forth by the petitioner to satisfy the trial Court as to how the Documents in S.Nos.1 and 2 are not connected with the case on hand. It is needless to say that summoning of documents 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. In the present case on hand, the discretion exercised by the learned Magistrate need not be interfered at all.

11.In the case on hand admittedly documents in S.Nos.1 and 2 are with the petitioner and the other two documents in S.Nos.3 and 4 are not in the hands of the petitioner. Therefore the learned trial Judge has rightly allowed the application partly filed by the respondents herein by directing the petitioner herein to produce the Documents in S.Nos.1 and 2 and rejected respondents' claim in so far as the Documents in S.Nos.3 and 4. Therefore the impugned order does not suffer from any material irregularity and does not require any interference by this Court.

12.In the view of the foregoing reasons, this Criminal Original Petition fails and accordingly the same is hereby dismissed. Consequently, connected miscellaneous petition is closed.

04.10.2017

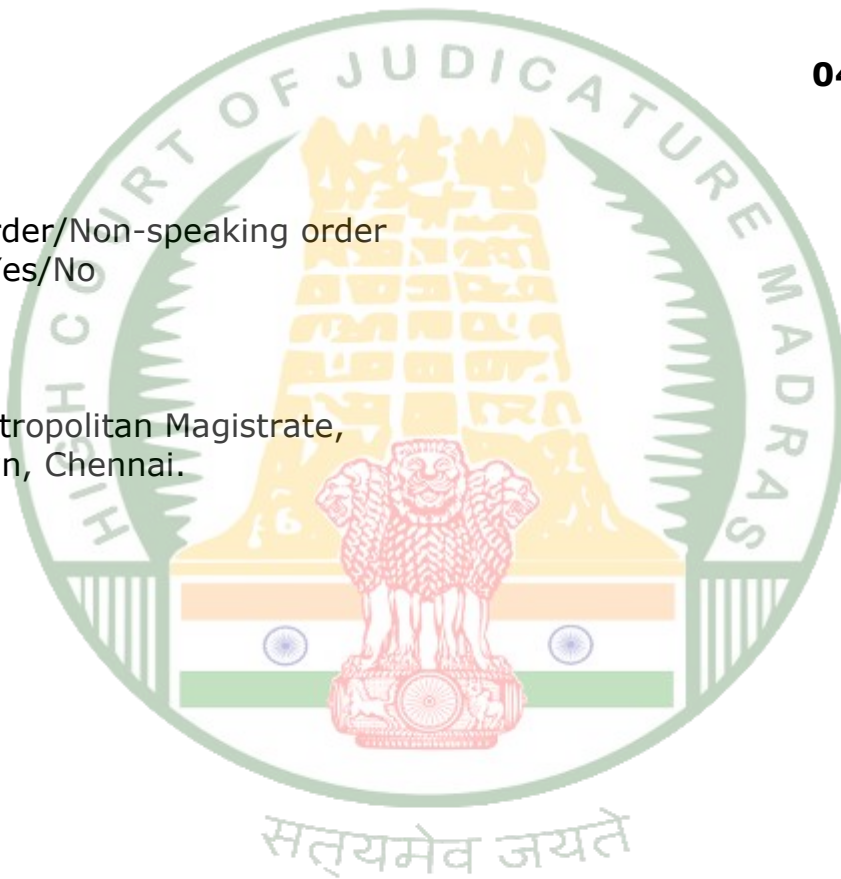
vs

Speaking order/Non-speaking order

Index : Yes/No

To

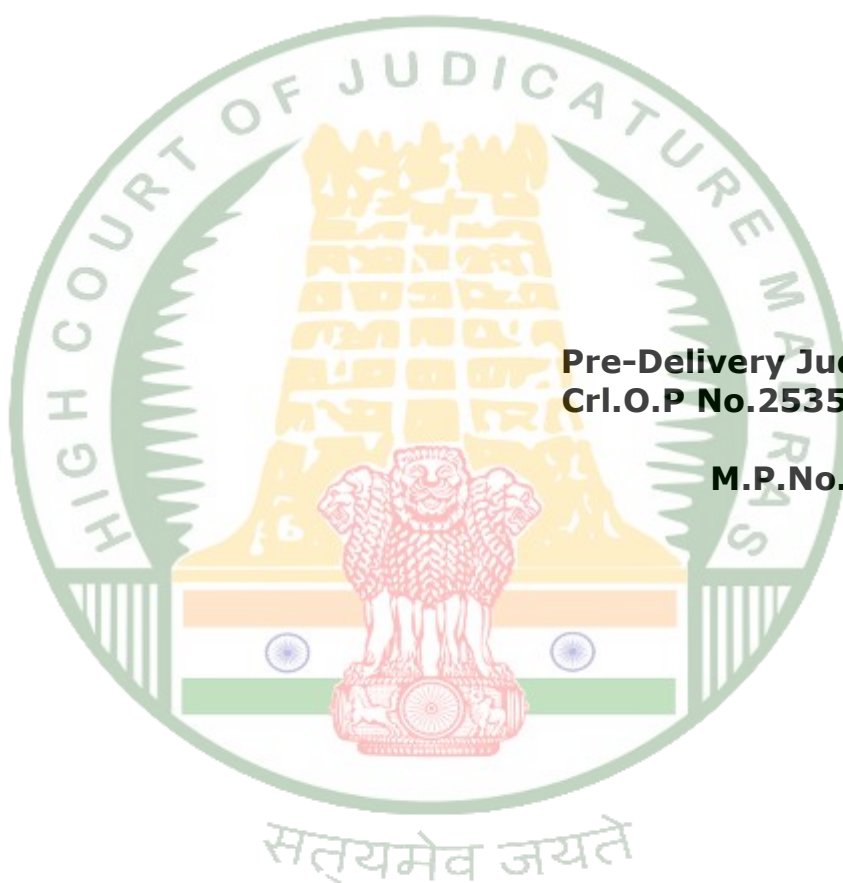
The VIII Metropolitan Magistrate,
George Town, Chennai.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.25354 of 2009
and
M.P.No.1 of 2009**

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