

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2017

CORAM

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

CRL.O.P.Nos.23192 and 23882 of 2012
and
M.P.No.1 of 2012

P.N.Kandasamy .. Petitioner in both O.P.s

Vs

D.Vijayalakshmi .. Respondent in both O.P.s

COMMON PRAYER: Petitions filed under Section 482 of the Code of Criminal Procedure, against the order dated 07.08.2012 made in C.M.P.Nos.2362 and 2363 of 2012 in C.C.No.16 of 2009 on the file of the Judicial Magistrate, Dharapuram.

(In both O.P.s)

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.Saravanan

COMMON ORDER

These Criminal Original Petitions were preferred by the petitioner/accused against the order dated 07.08.2012 made in C.M.P.Nos.2362, 2363 of 2012 in C.C.No.16 of 2009 on the file of the learned Judicial Magistrate, Dharapuram.

2.Brief case of the petitioner/accused is that:

The facts of the case is that the petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent and issued a cheque bearing its register No.649433 drawn on the Punjab National bank on 5.11.2008. The respondent herein presented the said cheque for collection in his banker Canara Bank, Kolathupalayam on 6.11.2008 and the same was dishonoured for the reason funds insufficient and the return memo was served on 11.11.2008. The respondent herein had issued a legal notice on 12.11.2008 and the same was served on the petitioner on 15.11.2008. Hence the respondent has preferred the complaint

under section 138 of Negotiable Instrument Act.

3.The accused in C.C.No.16 of 2009 who is facing trial for the alleged offences under Section 138 r/w 142 N.I. Act, is the petitioner in both the above petitions. Cr.M.P.No.2362 of 1962 has been filed under Section 311 Cr.P.C. praying the learned trial Court to re-open the above case and permit the petitioner to summon the investigating officer in Cr.No.2514 of 2011 on the file of Dharapuram police station and to examine as a defense witness. The another application was filed in Cr.M.P.No.2363 of 2012 under section 91 Cr.P.C. to send for the documents namely the FIR registered in Cr.No.2514 of 2012 on the file of the Dharapuram Police Station and the report filed by the Hand Writing Expert in O.S.No.102 of 2007 which is pending on the file of the Subordinate Judge, Dharapuram.

4.The learned trial Court, on consideration, dismiss the petitions filed by the petitioner/accused.

5.Aggrieved over the same, this criminal original petition is filed to set aside the order dated 07.08.2012 under Section 482 of Cr.P.C.

6.The learned counsel for the petitioner submits that the trial Court failed to note that in 138 proceedings the burden is casted upon the accused to rebut the allegations leveled against him. Therefore the trial Court ought to have afforded an opportunity to the petitioner/accused to dislodge the presumption against him.

7.The learned counsel for the petitioner submits that the trial Court has not taken into the consideration that the petitioner herein was permitted to reopen the case and call the police official in crime No.2514 of 2011 and the same had been dismissed in a routine manner.

8.The learned counsel for the petitioner submits that the trial Court failed to note that the cheque was not given to the respondent and it was given only to her husband Deivasigamani and who in turn had misused the same. The husband of the respondent/complainant had already facing criminal prosecution for forging an agreement in a suit for specific performance.

9.The learned counsel for the petitioner submits that the unearth the truth it is very much necessary to examine the Investigating officer in Crime No.2541 of 2011 and also mark the two documents.

10.I heard Mr.M.Guruprasad, learned counsel for the petitioner and Mr.S.Saravanan, learned counsel for the respondent in both the criminal original petitions and perused the entire materials available on record.

11.The case of the petitioner is that one Deivasigamani used to lend money to various persons and obtain their signatures in blank cheques. The said Deivasigamani filed specific performance suit against the third party in O.S.No.102 of 2007 it is pending on the file of the Sub Court, Dharapuram. In the said case, the learned trial Court ordered for expert opinion and found that the sale agreement is a forged document as per the opinion expressed by the expert and criminal complaint was lodged and FIR registered in Crime Number 2514 of 2011 . Hence the petitioner relied both the documents which are absolutely essential for proving his case. The documents referred by the petitioner are public documents and it is very difficult for the petitioner to get the certified copies of those documents and marked the same through him. Therefore the investigation officer in Cr.No.2514 of 2011 and the documents alleged have to be examined and marked in his case.

12.I do not find any infirmity in allowing the case of the petitioner/accused. The reason for dismissing the petitions by the learned trial Court is that the documents referred are public documents and can be marked by seeking copies from the authorities concerned. The learned trial Court ought to have bear in its mind that it is not easy today to get the public documents pertaining to the police station and from the Government offices.

13.Hence, the application filed by the petitioner/accused stands merit.

14.In the result, both the criminal original petitions are allowed and the order passed by the learned Judicial Magistrate, Dharapuram is set aside. The learned Judicial Magistrate, Dharapuram, is directed to fix the date for issuing summon to the Investigating Officer. The petitioner is directed to examine the witness on the particular date and the trial

Court is directed to take up the case in C.C.No.16 of 2009 on day to day basis, without giving any adjournment and to dispose of the same within a period of one month thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

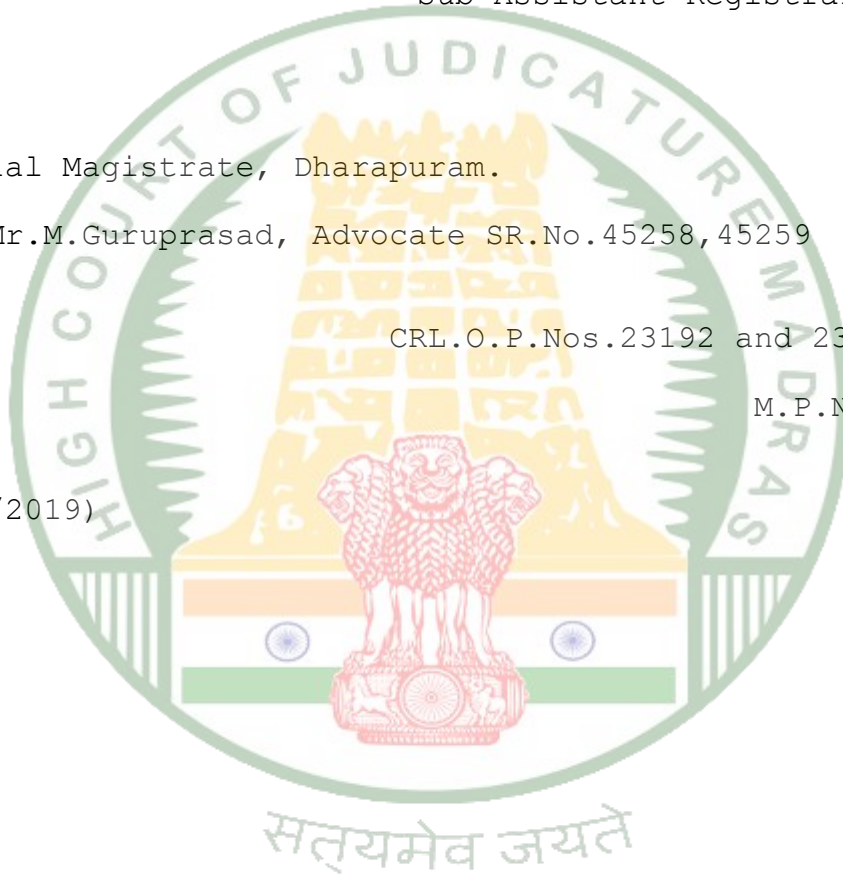
To

The Judicial Magistrate, Dharapuram.

+2ccs to Mr.M.Guruprasad, Advocate SR.No.45258,45259

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and
M.P.No.1 of 2012

SS(CO)
GMY(05/03/2019)



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