



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD)No.8766 of 2017

and

CRL.MP. (MD)No.5926 & 5927 of 2017

Balasubramanian

: Petitioner/Petitioner/
Sole Accused

-Vs-

State through the Inspector of Police,
EOW Unit-2,
Madurai District.

: Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to set aside the order passed by the learned Chief Judicial Magistrate, Madurai in Cr.M.P.No.111 of 2017 in CC.No.4 of 2014, dated 22.05.2017 and allowing this criminal original petition by directing the respondent to produce all documents, such as pass book, vouchers, account books, and other office records, which were kept in the premises at Door No.14/8, 2nd Street, Dr.Thangaraj Salai, KK.Nagar, Madurai, by the petitioner / sole accused.

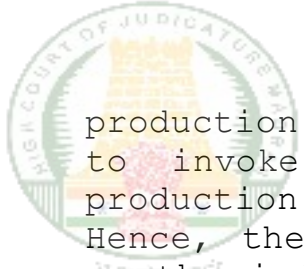
For Petitioner : Mr.Usillai O.Sivakumar

For Respondent : Mr.K.Anbarasan
Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order passed by the learned Chief Judicial Magistrate, Madurai in Cr.M.P.No.111 of 2017 in CC.No. 4 of 2014, dated 22.05.2017.

2. The petitioner/accused filed an application under Section 91 Cr.P.C., before the learned Chief Judicial Magistrate, Madurai, in Cr.M.P.No.111 of 2017, in which he is facing charges under Sections 406 and 420 IPC. He has filed this petition stating that some of the documents, such as pass book, vouchers, account book and other office records, which are available in the premises, while he was in possession as a tenant should be produced before the Court below. The Trial Court after discussing the scope and ambit of Section 91 Cr.P.C., dismissed the petition on the ground that it is premature. Section 91 empowers only the Court or the Investigation Officer to summon the person for



production of documents and that there is no scope for an accused to invoke Section 91 Cr.P.C to compel any person for the production of any documents even before the commencement of trial. Hence, the petition was rightly dismissed after placing reliance on the judgment of the Hon'ble Supreme Court in the decision in **State of Orrisa Vs. Dibendra Nath Padi** reported in **AIR 2005(1) SCC 568**, Where in para. 25, it has been held as follows:

"25. 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 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 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. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173, of the code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

3. The learned counsel for the petitioner quoted paragraph 16 of the order of the Court below and submitted that the petition filed under Section 91 Cr.P.C has been held as premature and hence unavailing. He further submitted that it is because of the observation in paragraph 16, the order is liable to be set aside.



In the entire petition, the petitioner has not specified the documents in particular, which are relevant and also the necessity of production of documents is not properly explained.

4. This Court has found that the submission of the learned counsel for the petitioner is not acceptable, having regard to the specific findings and reasons given by the Trial Court to dismiss the petition filed under Section 91 Cr.P.C. This Court has no reason to interfere with the order passed by the Court below as the petitioner is not entitled to summon the documents from the custody of respondent police, when it is the stand of the respondent that the key was handed over to the landlady of the petitioner and that the landlady had reported to the respondent that the petitioner had vacated from the demised premises after getting back the advance.

5. In such circumstances, this Court find no reason to interfere with the order passed by the Trial Court and the said order is perfectly valid and hence, this Criminal Original Petition is dismissed as devoid on merits. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chief Judicial Magistrate,
Madurai.
- 2.The Inspector of Police,
EOW Unit-2,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DAS/PJL

JS/SV/SAR.2/28.7.2017/3P-4C

CRL.O.P. (MD) No.8766 of 2017
12.07.2017