

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16682 OF 2016

ORDER:

In a prosecution for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), the accused in C.C. No.14 of 2016 on the file of the VII Special Magistrate, Hastinapuram, L.B. Nagar, filed CrI.M.P. No.1086 of 2016 under Section 91 of the Code of Criminal Procedure, 1973 (for short 'the Code') making a request to direct respondent No.2 – complainant to produce his bank passbook or bank statement for the period from July to September, 2012 and July to September, 2009 to enable him to proceed with the further cross-examination of PW.1 on production of the said documents.

2. The learned Special Magistrate passed an order, dated 22.11.2016, rejecting the request. That has been the reason the accused is before this Court questioning the said order under Section 482 of the Code.

3. Heard Sri Eranki Phani Kumar, learned counsel for the petitioner - accused and Sri G. Shyam Sunder Rao, learned counsel for respondent No.2 - complainant.

4. Though, not in detail, only the relevant facts for the disposal of the present criminal petition require advertence.

i) Respondent No.2 - complainant filed the complaint against the petitioner herein to prosecute him for the offence punishable under Section 138 of the Act. The petitioner herein appears to have taken the defence that the respondent No.2 - complainant was not that affluent to lend Rs.20,00,000/- as set out by the complainant. In the direction of disproving that the complainant had adequate amount to lend that much of amount, the petitioner herein filed Crl.M.P. No.1086 of 2016 under Section 91 of the Code to summon the aforesaid documents at the stage of cross-examination of PW.1.

5. The learned counsel for respondent No.2 - complainant raised the question that it is not the stage at which an application of this nature can be filed, as the matter did not reach the stage of examination of the accused under Section 313 of the Code, so as to enable the accused to come out with the defence. He placed reliance on a decision of the Hon'ble Supreme Court rendered by a three-judge bench in **State of Orissa v. Debendra Nath Padhi**¹. The question before the Hon'ble Supreme Court was can the trial Court at the time of framing of charge consider the material filed by the accused. While observing that the width of the powers of Section 91 of the Code is unlimited, but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability,

¹. (2005) 1 SCC 568

to fulfill the task or achieve the object, held in paragraph Nos.27 to 30

thus:

“27. In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne

in mind that law does not permit a roving or fishing inquiry.

29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal's case*.

30. The result of the aforesaid discussion is that Criminal Appeal No. 497 of 2001 is allowed, the impugned judgment of the High Court is set aside. The trial court is directed to proceed from the stage of framing of charge. Having regard to the fact that the charges were framed about 11 years ago we direct the trial court to expeditiously conclude the trial and as far as possible it shall be held from day-to-day.”

6. The law declared by the Hon'ble Supreme Court, certainly, would not render assistance to the petitioner herein. In order to prove his defense, he may, at the most, confront PW.1 with the documents in his custody, but not to throw the burden on the complainant to cause production of the documents to prove his case and to disprove the case of the complainant. Therefore, there is no infirmity in the order passed by the learned Special Magistrate. It is well settled that the burden is on the complainant to prove that the debt contracted by the accused is legally enforceable.

Hence, the present Criminal Petition is dismissed at the stage of admission itself. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2017.

Mgr

