

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.10.2018

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

Crl.O.P.No.19932 of 2012
and
M.P.No.1 of 2012

Ekambaram

.. Petitioner

vs

A.Poovai Manalan

.. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure against the order of the learned Judicial Magistrate I, Kancheepuram in M.P.No.37 of 2012 in C.C.No.121 of 2011, dated 1.3.2012.

For Petitioner : Ms.A.Sumathy

For Respondent : Mr.K.M.Balaji

ORDER

The petitioner has filed this original petition challenging the order dated 1.3.2012 passed by the learned Judicial Magistrate I, Kancheepuram in M.P.No.37 of 2012 in C.C.No.121 of 2011.

2. The facts in brief are as under: The respondent is the complainant. In the complaint lodged by the respondent, it is stated that on 31.7.2010, the wife of the petitioner entered into an agreement with the respondent for construction of residential building at the cost of Rs.7,60,000/-. According to the complainant, there is a due of Rs.1,17,479/- payable by the petitioner and his wife, but despite his efforts they were not paying the same and, hence, the respondent lodged a complaint on 25.2.2011 before the Inspector of Police, Siva Kanchi Police Station, Kancheepuram.

3. It is stated that in the enquiry conducted at the police station, the parties agreed to settle the dispute on the petitioner and his wife paying a sum of Rs.60,000/- to the respondent. Accordingly, it is stated that the petitioner paid a sum of Rs.10,000/- in cash and issued three post dated

cheques, viz., (1) Cheque No.090165, dated 25.4.2011 for Rs.20,000/-; (ii) Cheque No.030166, dated 25.5.2011 for Rs.20,000/-; and (iii) Cheque No.090167, dated 25.6.2011 for Rs.10,000/-.

4. It is stated in the complaint that when the first cheque was presented by the respondent, the same was returned with the endorsement "Payment stopped by drawer". The respondent issued a notice on 12.5.2011. The petitioner sent his reply on 20.5.2011. Thereafter, the petitioner filed a complaint before the learned Judicial Magistrate I, Kanchipuram, which was taken on file as C.C.No.121 of 2011.

5. In the said complaint, the petitioner herein filed a petition under Section 91 of the Criminal Procedure Code to direct the respondent to produce vouchers issued by him acknowledging receipt of payment from the petitioner and his wife.

6. By order dated 1.3.2012 passed in M.P.No.37 of 2012 in C.C.No.121 of 2011, the learned Judicial Magistrate I, Kancheepuram, dismissed the petition.

7. Aggrieved by the said order, the present criminal original petition is filed.

8. I heard Ms.A.Sumathy, learned counsel for the petitioner and Mr.K.M.Balaji, learned counsel for the respondent and perused the documents available on record.

9. The entire dispute centres around payment of Rs.50,000/- by way of cheques, of which we are concerned in this case with the first cheque bearing No.090165, dated 25.4.2011 for Rs.20,000/-. Admittedly, the said cheque was returned with the endorsement "Payment stopped by drawer".

10. While it is the case of the respondent that without getting the payment receipt from him, the petitioner never paid any amount, it is the case of the petitioner that respondent did not complete the construction work and left it abruptly and that is the reason behind directing the bank to stop payment of the cheque.

11. Be that as it may, the fact remains that the petitioner had issued three cheques and also signed on them. The Court below categorically held that the respondent/complainant is not in possession of the receipts to produce the same and, therefore, dismissed the miscellaneous petition filed under Section 91 of the Criminal Procedure Code. When jurisdiction of the Court under Section 91 of the Criminal Procedure Code is invoked by the 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.

12. In the case on hand, the evidence is yet to be record. Examination of witnesses and their cross-examination is not yet done. The trial Court has as yet not gone into the merits of the rival claims. If the trial Court had dismissed the miscellaneous petition filed by the petitioner taking note of the submission of the respondent that he is not in possession of the vouchers, it is for it to proceed in accordance with law. This Court does not propose to express any opinion on the merits of the case. We, therefore, do not find any infirmity in the order passed by the Court below.

In such view of the matter, the criminal original petition is dismissed. The Court below is directed to proceed with the matter on merits and in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate I,
Kanchipuram.

Crl.O.P.No.19932 of 2012 and
M.P.No.1 of 2012

RSI (CO)

rrs 24/10/2018

WEB COPY