

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.137 to 139 of 2010

and M.P.No.1 of 2010

T. Kamalakkannan

...

Petitioner
in all revisions

Vs

F. Ashok Kumar

...

Respondent
in all revisions

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.12.2009 made in I.A.Nos.20904, 20902 and 20903 of 2009 in O.S.No.2484 of 2004 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Sudharshan
for Mr.S.Subramanian
in all revisions

For Respondent : Mr.Aravind Srivatsan
for Mr.T.V.Krishnamachari
in all revisions

COMMON ORDER

The above Civil Revision Petitions are filed challenging the Common Order passed by the learned XIV Assistant Judge, City Civil Court, Chennai in I.A.Nos.20904, 20902 and 20903 of 2009 in O.S.No.2484 of 2004 dated 03.12.2009 dismissing the said applications.

2.I.A.No.20902 of 2009 was filed for issuance of summons to Central Crime Branch of the Commissioner Office, Egmore, to produce documents listed in the petition.

3.I.A.No.20903 of 2009 was filed to recall D.W.1 for further cross examination.

4.I.A.No.20904 of 2009 was filed to re-open the case for further cross examination of D.W.1.

5.The facts which are necessary for disposing of the Civil Revision Petition are as follows:

The suit O.S.No.2404 of 2004 was filed by the revision petitioner herein against the respondent for a declaration that the Cheque bearing No.481262 dated 31.05.2004 drawn on the Oriental Bank of Commerce, T.Nagar Branch, Chennai, was obtained from the plaintiff by using undue influence, coercion and fraud and thereby *ab initio* void and invalid.

6.The plaint proceeded on the basis that the revision petitioner had borrowed money from the respondent for which he had given blank Promissory Notes and cheques for security apart from the original Title Deeds. The amount borrowed only was a sum of Rs.80,000/- which periodically repaid by the revision petitioner from the month of July 2002 and was finally cleared. After clearing the said loan, the revision petitioner had been demanding return of blank signed Promissory Notes and blank Cheques and also original title deeds. Since the respondent refused to impart with the documents, the revision petitioner was constrained to give a complaint to Mambalam Police Station on 13.10.2003. However, no action was taken on the said complaint. On the contrary, the revision petitioner was slapped

with the notice under Section 91 of the Code of Criminal Procedure from the very same Police Station on the basis of the counter complaint made by the respondent. The revision petitioner was forced to take anticipatory bail against arrest for the said complaint.

7. Thereafter, in March 2004, the revision petitioner was forcibly taken by one Sitaraman, Sub Inspector of Police, attached to the Central Crime Branch, who detained the revision petitioner in the office and forcibly obtained a Cheque, which is the subject matter of the suit. The revision petitioner would contend that the said Cheque was obtained by fraud and coercion and had to be declared as null and void.

8. The respondent had denied the aforesaid allegations made in the Complaint contending that the revision petitioner had borrowed a sum of Rs.5,50,000/- and as on 02.10.2004, the revision petitioner was liable to repay a sum of Rs.6,82,000/-. The respondent had admitted the deposit of title deeds, but denied the execution of blank Promissory Notes and Cheques. In

the latter portion of the written statement, the respondent has submitted that he was not bound to return the original title deeds, Promissory Notes and Cheques since the revision petitioner has not discharged the loan amount. The respondent has categorically denied the involvement of the police in the transaction.

9. Pending cross examination of D.W.1, the revision petitioner had come forward with the applications in question and in the affidavit filed thereof would submit that he had taken out the applications for issuance of summons even when the defendant was in the box and the same had been twice returned by which time the evidence of D.W.1 was also closed. He would further submit that these documents are necessary because the respondent has given very noncommittal answers and therefore, the revision petitioner in order to prove his case had to issue summons.

10. This petition was resisted by the respondents by *inter alia* contending that the application was highly belated and that

the revision petitioner had obtained all answers in his cross examination and therefore, there is no necessity to once again issue summons to the Police authorities. In Paragraph 5 of the counter affidavit, he would admit that the complaint was closed on compromise by the Police. The learned XIV Assistant Judge, City Civil Court, Chennai, after hearing the submissions of both the parties dismissed the application stating that by seeking the issue of summons to the police authorities the revision petitioner has attempted to change the nature of the suit. The learned Judge would also state that the revision petitioner has to prove his case by examining his witnesses. On these two grounds, the application has been dismissed.

11. Heard Mr.S.Sudharsan, learned counsel appearing for the petitioner and Mr.Aravind Srivatsan, learned counsel appearing for the respondent.

12.The learned counsel for the petitioner would argue that the application was moved only to prove the case to be put forward in the complaint and the learned Judge has totally misconstrued that it changes the nature to the suit. He would submit that the learned Judge has not appreciated the application and therefore, the order deserves to be set aside.

13.Per contra, Mr.Aravind Srivatsan, has argued that

- (1)The application is highly belated.
- (2)These documents were very much with in the knowledge of the plaintiff when he filed the suit, he ought to have produced it.
- and
- (3)The revision petitioner was trying to improve the case.

14.Heard the submissions of both sides and perused the papers.

15.The revision petitioners has come forward with a specific case that the cheque in question has been obtained by misusing the police machineries and by asserting pressure on him. This is the sum and substance of the case. In order to substantiate these contentions where the revision petitioner had given specific instances, the revision petitioner is bound to prove his case. The petition for issuing summons to the Central Crime Branch, Office of the Commissioner of Police, Egmore, Chennai, is a mode of discharging this onus.

16.The submissions of the learned counsel for the respondent that the application is belated since the respondent already had knowledge about the documents may not hold water. since the application has been taken immediately when the evidence of the defendants had commenced and after the respondent had refused to give answers. The revision petitioner is only trying to substantiate the statement made by him in the Plaint and therefore, it cannot be said that the revision petitioner is trying to improve the case and that he had knowledge to

produce the documents. Since these documents are in the custody of the police it can be summoned only at the time of adducing evidence. The learned XIV Assistant Judge, City Civil Court, Chennai, has not appreciated the contents of the pleadings and the reasons for the petition. The order suffers from an absolute non application of mind and it is set aside.

17. In the result, this Civil Revision Petition is allowed and the Common Order dated 03.12.2009 in I.A.Nos.20904, 20902 and 20903 of 2009 in O.S.No.2484 of 2004 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, is set aside. The learned XIV Assistant Judge, City Civil Court, Chennai, shall issue summons to Central Crime Branch, Office of the Commissioner, Egmore, Chennai, to produce the documents listed in the petition therein within ten days from the date of receipt of the order and once documents are produced to reopen the case for further cross examination of D.W.1 and to recall for further cross examination, this exercise shall be completed within a period of three months from the date of receipt of the documents from the Central Crime Branch, Office of the

Commissioner of Police, Egmore, Chennai. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

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To

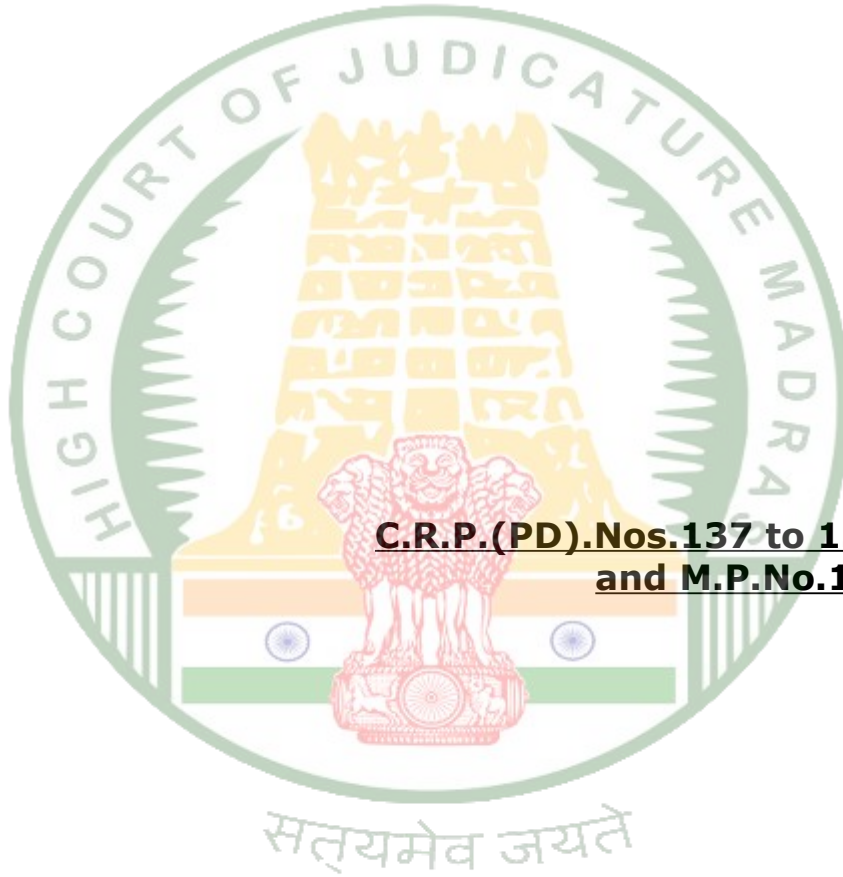
The XIV Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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