

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.2310 of 2018

and

Crl.M.P. Nos. 904 & 905 of 2018

GRK Civil Supplies,
Rep. by its Proprietor,
Mr.T.J.Rajesh Kumar,
S/o.Jayakumar. ... Petitioner

vs.

Balasundaram ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. to set-aside the order dated 18-12-2018 in C.M.P.No.1018 of 2016 in C.C.No.401 of 2010 on the file of the Judicial Magistrate I, Chengalpattu.

For petitioner : Mr.K.Sudhakar

O R D E R

This Criminal Original Petition has been filed to set-aside the order dated 18-12-2018 C.M.P.No.1018 of 2016 in C.C.No.401 of 2010 on the file of the Judicial Magistrate I, Chengalpattu.

2. For the sake of convenience the parties will be referred as the complainant and the accused. It is the case of the complainant that he is doing granite stone, jelly business; that he supplied materials to the accused in the year 2009 to a tune of Rs.2,82,220/-; that the accused received the materials but did not make payment; that when the complainant started pestering the accused to make payments, the accused made part payment by way of cheque and cash; that the accused agreed to pay Rs.1,79,723/-; that on 20.01.2010 the accused executed a Letter of Undertaking in the presence of two witnesses agreeing to pay Rs.1,79,723/- ; that the accused gave a cheque dated 03.04.2010 for Rs.2,00,000/- towards the balance amount including interest and transport charges; that the complainant presented the cheque on 10.05.2010 and the cheque was dishonoured for insufficiency of funds; that the complainant

issued a statutory notice dated 10.08.2010 to the accused but the accused did not receive the statutory notice; that the complainant had no other alternative but to file the present complaint for the offences under Section 138 of the Negotiable Instruments Act. The complaint was taken on file as C.C. No. 401 of 2010 by the Judicial Magistrate No.1, Chengalpattu. The accused appeared before the Magistrate and contested the case. During cross examination of the complainant, the accused marked a notice dated 05.04.2010 issued through his Advocate to the Complainant. In the said notice, the accused has stated as follows :-

" You without any valid reason are constantly torturing my client over phone and attempting to disturb his concentration on his day-to-day activity. You had gone to his office, when my client was not there, by threatening the workers of my client and illegally possessed some signed cheques which were kept in my client's office. When it came to my knowledge of my client he was shocked and approached you to return the cheques."

Further, in the cross examination, the complainant has admitted that he has received four cheques from the accused. While so, the accused filed Crl.M.P. No. 1018 of 2016 in C.C. No. 401 of 2010 under Section 91 of Criminal Procedure Code, for a direction to the complainant to produce the following documents :

a) Purchase receipt of Malaimanal with regard to October, 2009 along with permission order of Government.

b) Four numbers of Karur Vysya Bank Cheque No.519594, 519584, 519585, 519586.

3. The complainant filed counter affidavit. The trial court by order dated 18.12.2017 in Crl. M.P. No.1018/2016 in C.C. No. 401 of 2010 has dismissed the petition. Challenging which the accused is before this Court.

4. Heard Mr. K. Sudhakar, learned counsel appearing for the accused, who submitted that the accused had issued a notice dated 05.04.2010 to the complainant alleging that the complainant had taken away cheques from the office of the accused stealthily. Therefore, learned counsel contended that the documents called for by the accused are essential for just decision of the case. Learned counsel also drew the attention of this Court to the cross examination of the complainant wherein he has stated that four cheques of the accused are with him.

5. This Court gives its anxious consideration to the

submission made by the learned counsel for the petitioner. It is a trite law that the trial court cannot pass an order under Section 91 CrPC on the mere asking of a party. In State of Orissa vs. Devendra (2004) AIR SCW 6813, the Supreme Court has held that Section 91 CrPC cannot be used for conducting a fishing enquiry. On a reading of the petition in Crl. M.P. No.1018/2016 filed by the accused, this Court finds that the accused has not stated as to how the documents called for are relevant to the facts in issue. On a reading of the Advocate's notice dated 05.04.2010, this Court finds that the accused has not even stated the date on which the complainant is said to have come to the office of the accused and taken away the cheques. Had the complainant taken away the cheques as alleged by the accused, the accused would have first gone to the police station and lodged a complaint. The allegations in the notice dated 05.04.2010, are unbelievable. In such view of the matter, this Court does not find any infirmity in the order passed by the trial court, warranting interference.

6. In the result, this petition is dismissed, as devoid of merits.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

avr

To

1. The Judicial Magistrate I
Chengalpattu.

+1 CC to Mr.K. Sudhakar, Advocate sr 34682.

+1 CC to Mr.G. Magesh Kumar, Advocate sr 34528.

WEB COPY

Crl.O.P. No.2310 of 2018

SP(12/06/2018)