

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15195 of 2018

AND

Crl.MP.No.7686 of 2018

S.Arthanarisamy

..Petitioner/Accused

Vs

R.Saravanan

..Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order date 21.12.2017 made in C.M.P.No. 617 of 2017 in STC No. 75 of 2017 on the file the II Additional District Munsif Court, Bhavani by allowing this Criminal Original Petition.

For Petitioner : M/s.R.Prabakar

ORDER

This petition has been filed to set aside the order date 21.12.2017 made in C.M.P.No. 617 of 2017 in STC No. 75 of 2017 on the file the II Additional District Munsif Court, Bhavani by allowing this Criminal Original Petition.

2. For the sake of convenience, the parties will be referred to as complainant and accused. It is case of the complaint that the accused had purchased textile goods vide Bill No.35 from the complainant on credit basis for a sum of Rs.1,25,000/- (Rupees One Lakh and twenty five thousand only); that the accused gave a impugned cheque on 23.11.2015 for a sum of Rs. 1,25,000/- (Rupees One Lakh and twenty five thousand only); that the accused purchased goods by the Bill No.35 on 04.11.2015 for a sum of Rs.1,25,000/- (Rupees One Lakh and twenty five thousand only) for which, he gave another cheque dated 20.11.2015; that the complainant presented two cheques for collection on 18.12.2015, both of them returned unpaid for sufficient funds; that the complainant issued a notice dated 11.01.2016 which was returned on 21.01.2016; that since the accused did not make any payment, the complainant has initiated a prosecution in STC.No.75 of 2017 and same is now pending on the Judicial Magistrate, Bhavani.

3. It appears that the Chief Examination of the complainant was given by a proof affidavit and the accused cross examined him. In the cross examination, the complainant

has admitted that he has got certain records like bill book, date book, delivery challan, etc. to show the debt. Under such circumstances, the accused filed CMP.No.616 of 2017 in STC.No.75 of 2017 under section 91 of Cr.P.C for a direction to the complainant to produce all the documents which has been dismissed by the impugned order dated 21.12.2017. Challenging which, this petition has been filed in the year 2015.

4. Heard the learned counsel for the accused who submitted that those documents are essential to prove the debt. He has also submitted that since the complainant has admitted in the cross examination that he will produce those documents, if there is a direction from the Court, then the trial Court should have allowed the petition on that score itself.

5. This Court gave its anxious consideration to the submissions of Mr.R.Prabakar, learned counsel for the accused.

6. A petition under Section 91 of Cr.P.C can be maintainable only if it is shown that the document called for is necessary or desirable for the purpose of the case.

7. In Debendranath Padi Vs State of Orissa reported in [2003] 2 SCC 711, the Supreme Court has stated that no fishing enquiry can be permitted under Section 91 of Cr.P.C. In this case, the complainant has filed the bills, invoice Nos.33 and 34 along with the complaint. Just because, the complainant has stated in the cross examination that he is willing to produce the document if directed by the Court, it does not mean that in that case, a direction should be issued. Before issuing a direction, a Court should decide about the relevancy of the documents. In this case, the accused has not even made any suggestions, with regard to the impugned cheque to the complaint. In such view of the matter, this is not a fit case to set aside the order passed by the court below.

8. Hence, this petition is dismissed. Consequently, connected MIScellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

gmd/gya

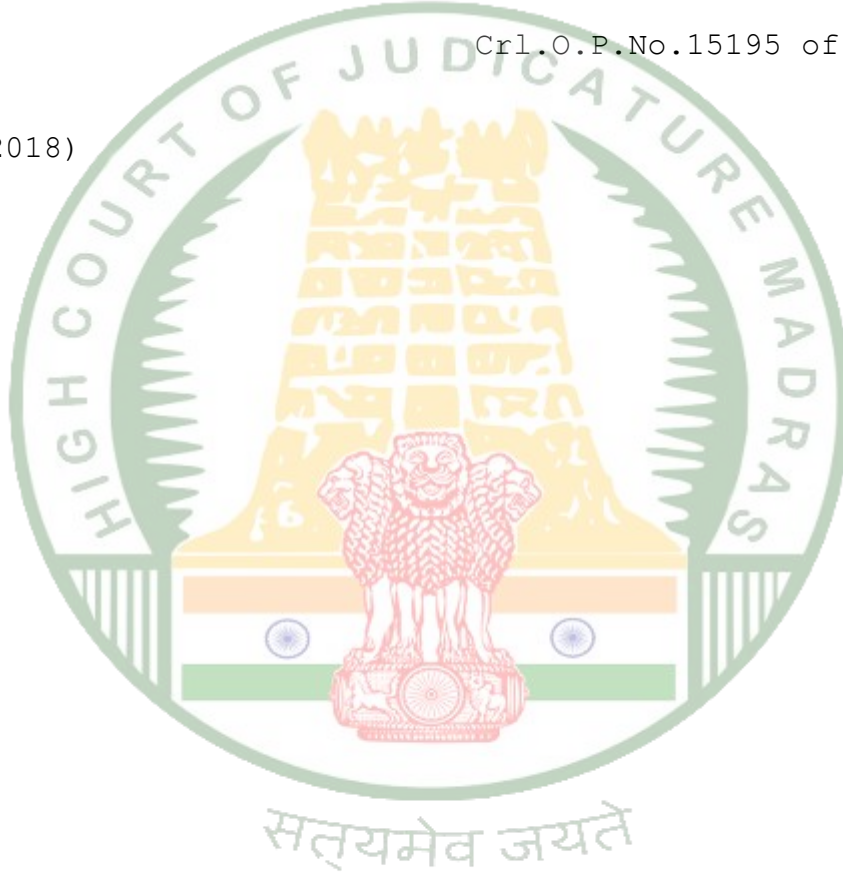
To

The II Additional District Munsif Court,
Bhavani.

+ 1 cc to Mr.R. Prabakar, Advocate Sr.36291

Crl.O.P.No.15195 of 2018

KS (CO)
EU (02/07/2018)



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