

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.15227 of 2018

AND

Crl.MP.Nos.7725 & 7726 of 2018

S.Gopi ...Petitioner/Accused

Vs

S.Babu ...Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order of dismissal dated 08.05.2018 in Crl.MP.No.1551/2018 in C.C.No. 1455/2016 dismissing the section 91 of Cr.P.C. passed by the Learned Fast Track Court-IV, Metropolitan Magistrate at George Town, Chennai and allow the same.

For Petitioner : M/s.V.T.Narendiran

ORDER

This petition has been filed to set aside the order of dismissal dated 08.05.2018 in Crl.MP.No.1551/2018 in C.C.No. 1455/2016 dismissing the section 91 of Cr.P.C. passed by the Learned Fast Track Court-IV, Metropolitan Magistrate at George Town, Chennai.

2. For the sake of convenience, the parties will be referred to as complainant and accused. It is the case of the complainant that the accused borrowed for a sum of Rs.8,00,000/- (Rupees Eight lakhs only) as hand loan and in discharge of the said liability, the accused had given two cheques for Rs.4,50,000/- and Rs.3,50,000/- which when presented by the complainant was dishonored for insufficiency of funds on 06.06.2015 and 09.06.2015. The complainant issued a statutory notice dated 20.06.2015 and since, the accused did not comply with the demand, the complainant has initiated a prosecution in CC.No. 1455 of 2016 which is now pending on the file of the Fast Track Court-IV, Metropolitan Magistrate at George Town, Chennai. The complainant was examined in chief and he was extensively cross examined by the accused. Thereafter, the accused filed Crl.MP.No. 1551 of 2018 in CC.No.1455 of 2016 under Section 91 Cr.P.C. for a direction to the complainant to produce his;

- (a) Income tax returns from 2013 to 2017 and
- (b) To produce is bank account details from 2013 to 2016.

3. After hearing the complainant and the accused, the trial Court by a well considered order dated 08.05.2018, has dismissed CrI.MP.No. 1551 of 2018, aggrieved by which, the accused is before this Court.

4. Heard, Mr.V.T.Narendiran, learned counsel for the accused who submitted that the complainant has not produced any evidence to show that he has the means to give the loan or that the said loan has been disclosed in his Income tax returns. He also submitted that the complainant in his cross examination, has admitted that he would produce the documents relating to his Income tax returns if called upon by the Court. Therefore, it became imperative for the accused to file the application under Section 91 of Cr.P.C. in order to discharge the burden under Section 139 of the Negotiable Instruments Act, 1881.

5. This Court gave its anxious consideration to the submissions of Mr.Narendiran. On a close reading of the cross examination of the complaint, the complainant has admitted in his cross examination that he has not disclosed about the loan of Rs.8,00,000/- (Rupees Eight lakhs only) in his Income tax returns. Therefore, when he has stated so, it is not necessary to call for the Income tax returns. As regards the bank account details of the complainant, it is the specific defence of the accused that the impugned cheques were given to the third party and that, the complainant misused the same. When that being the defence of the accused, the bank account details of the complainant may not be necessary.

6. However, Mr.Narendiran contended that the accused is entitled to multiple and conflicting defence and therefore, the bank account details are essential to prove that the complainant did not have the necessary means to give the loan. In the opinion of this Court, the provisions of 91 Cr.P.C. cannot be invoked to conduct a fishing enquiry as held by the Supreme Court in Debendranath Padi Vs State of Orissa reported in [2003] 2 SCC 711, which the trial Court has rightly relied up on. This Court places on record its appreciation to the trial Judge for the manner in which, he has understood the crux of the case and has dealt with the Interlocutory Application of the accused.

7. In the result, this Court does not find any reason to interfere with the well considered order passed by the trial

Court, this petition is dismissed. However, whatever observed herein is only for the limited extent of deciding this application and the trial Court shall proceed with the trial without in any manner influenced what is stated above. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

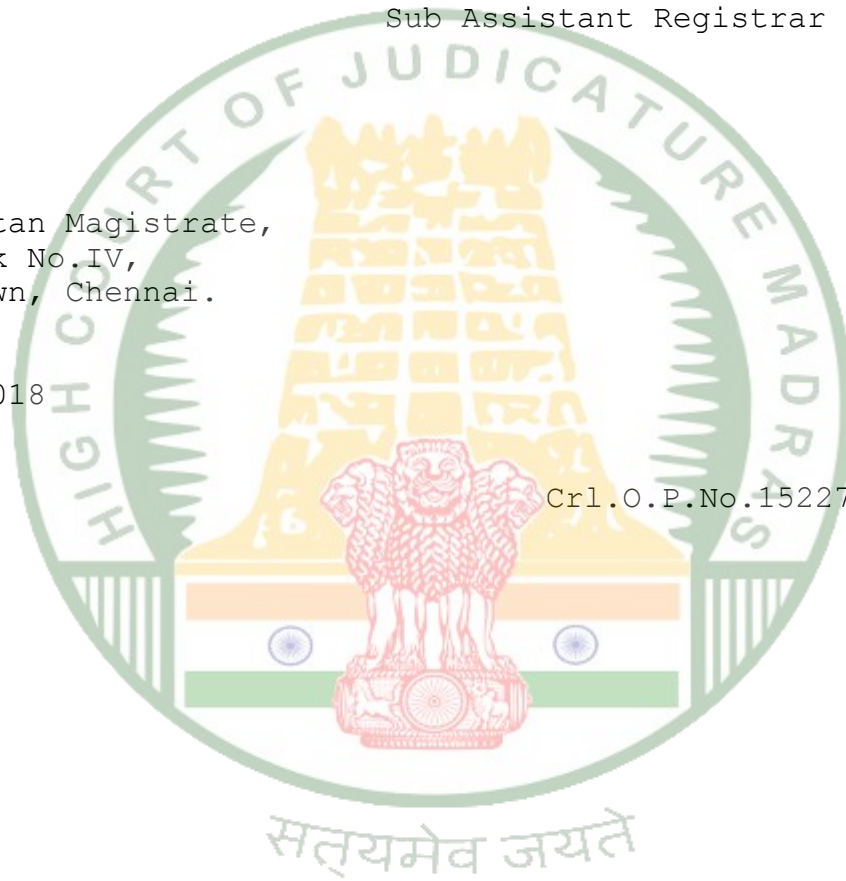
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To

Metropolitan Magistrate,
Fast Track No.IV,
George Town, Chennai.

SSV(CO)
sm:25.6.2018

Cr1.O.P.No.15227 of 2018



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