

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.17122 of 2018

and

Crl.MP.No.8831 of 2018

A.Kandhasamy

... Petitioner

Vs

Mrs.N.Jeya

...Respondent

Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 03.04.2018 made in Crl.MP.No.4817 of 2017 in STC.No.12 of 2015 on the file of the Judicial Magistrate Court No.II, Pollachi.

For Petitioner : Mrs.A.Preethi Prasanna
for Mr.K.Thilageswaran

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 03.04.2018 made in Crl.MP.No.4817 of 2017 in STC.No.12 of 2015 on the file of the Judicial Magistrate Court No.II, Pollachi.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the complainant and the accused respectively.

3. The complainant has initiated a prosecution in STC.No.12 of 2015 for the offence under Section 138 of the Negotiable Instruments Act, 1881, (for short "the NI Act") against the accused and the same is pending on the file of the Judicial Magistrate No.II, Pollachi. The trial began with the examination of the complainant as PW1. During cross-examination of PW1 by the accused, PW1 conceded that on 28.11.2012, there was a transaction between the accused and PW1's wife and there is a document in respect of the said transaction and that he is ready to produce the said document. The accused stopped the cross-examination and filed CMP.No.4817 of 2017 in STC.No.12 of 2015 under Section 91 Cr.P.C., to produce the said document by the complainant. After hearing either side, the trial Court, by the impugned order dated 03.04.2018, has allowed CMP.No.4817 of

2017 in STC.No.12 of 2015, aggrieved by which, the complainant is before this Court.

4. Mrs.A.Preethi Prasanna, learned counsel for the petitioner/complainant submitted that the particular document called for has no relevance to the fact in issue inasmuch as the said document relates to the loan transaction between the complainant's wife and the accused, whereas, the present case relates to the transaction between the complainant and the accused.

5. Be that as it may, the accused has got a burden under Section 138 of the NI Act, to discharge. It is true that the accused did not reply to the statutory notice that was issued by the complainant under Section 138 of the NI Act. Nevertheless, the trial Court has exercised its discretion in favour of the accused, by exercising its powers under Section 91 Cr.P.C. This Court is not inclined to interfere with the order passed by the trial Court since this Court does not find any perversity or illegality in the said order.

6. The learned counsel for the complainant submitted that the document is not available with the complainant.

7. However, neither in the counter filed by the complainant before the trial Court nor in the affidavit filed by the complainant before this Court, such a stand has been taken. May be, the said document is available with the complainant's wife and she may require it for taking legal action against the accused. Nevertheless, by producing a copy of it, no prejudice will be caused to either side. Hence, to strike a fair balance, this Court directs the complainant to produce the original and photo copy of the said document and after complying with the same, the original may be returned to the complainant and the copy may be marked as an Exhibit. After completion of the cross-examination of PW1, PW1 must be given an opportunity to explain about the said document in re-examination.

With the above observation, this petition is closed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mk

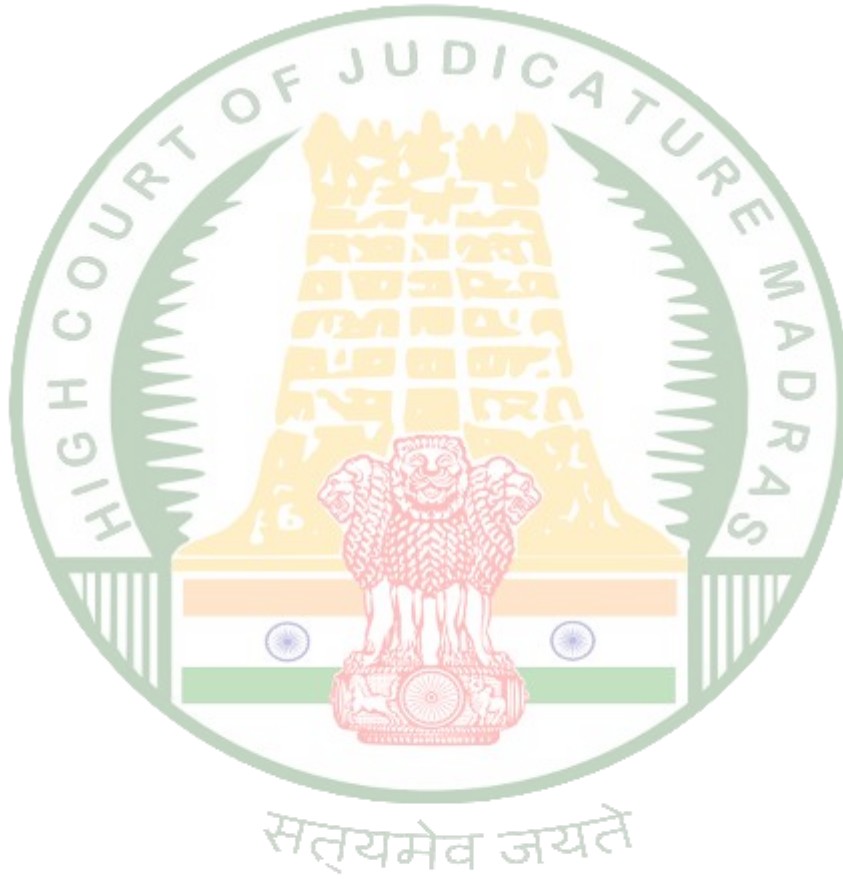
To

1.The Judicial Magistrate No.II,
Pollachi.

+1cc to Mr.K.THILAGESWARAN, Advocate, S.R.No. 44412

Cr1.OP.No.17122 of 2018

TR(11/07/2018)



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