

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.18730 of 2018
and
Crl.MP.No.9907 of 2018

G.S.Uma Maheswari

... Petitioner

Vs

P.Kalimuthu

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the order dated 18.06.2018 made in C.R.P.No.64 of 2017 on the file of the learned Third Additional District and Sessions Court, Erode at Gobichettipalayam, confirming the order dated 03.11.2017 made in C.M.P.No.2220 of 2017 in STC.No.4764 of 2014 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam, set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the order dated 18.06.2018 made in C.R.P.No.64 of 2017 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam, confirming the order dated 03.11.2017 made in C.M.P.No.2220 of 2017 in STC.No.4764 of 2014 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

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

3. The complainant initiated a prosecution in STC.No.4764 of 2014 for the offence under Section 138 of the Negotiable Instruments Act, 1881, and the same is pending trial before the Judicial Magistrate No.I, Gobichettipalayam. The complainant was examined as PW1 and he was cross-examined by the accused.

Thereafter, the accused filed CMP.No.2220 of 2017 in STC.No.4764 of 2014 under Section 91 Cr.P.C. seeking a direction to the complainant to produce seven documents. The trial Court, after hearing either side, has dismissed CMP.No.2220 of 2017 in STC.No.4764 of 2014 on 03.11.2017. Challenging the said order, the accused filed C.R.P.No.64 of 2017 before the Sessions Court and the same has been dismissed by the III Additional District and Sessions Judge, Erode, Gobichettypalayam on 18.06.2018. Challenging the orders passed by the Courts below, the accused has filed the present petition.

4. Heard Mr.N.Manokaran, learned counsel for the accused/petitioner.

5. The learned counsel for the petitioner submitted that the documents called for by the petitioner are very relevant inasmuch as the complainant has admitted that he is paying income tax regularly and that he is ready to produce the records.

6. This Court gave its anxious consideration to the submission made by the learned counsel for the accused.

7. In State of Orissa vs. Debendra Nath Padhi [2004 AIR SCW 6813], the Supreme Court has held that the powers under Section 91 Cr.P.C. cannot be invoked in order to make fishing enquiry and it should be first shown that the documents called for are just and necessary for the purpose of trial. Both the Courts have held on facts that the documents called for are not relevant to decide the fact in issue and that the petition has been filed only to protract the trial. When once a party approaches the Sessions Court, he is precluded from filing a second revision before the High Court under Section 397(3) Cr.P.C. However, a petition under Section 482 Cr.P.C. is maintainable, if it is shown that the orders passed by the Courts below are per se perverse and beyond jurisdiction. In this case, the trial Court and the Sessions Court have gone into the entire case and have negatived the prayer of the petitioner/accused. Under such circumstances, this is not a fit case to exercise the powers under Section 482 Cr.P.C. to interfere with the orders passed by the Courts below, since there is neither perversity nor illegality in the orders. Hence, this petition is dismissed, as being devoid of merits. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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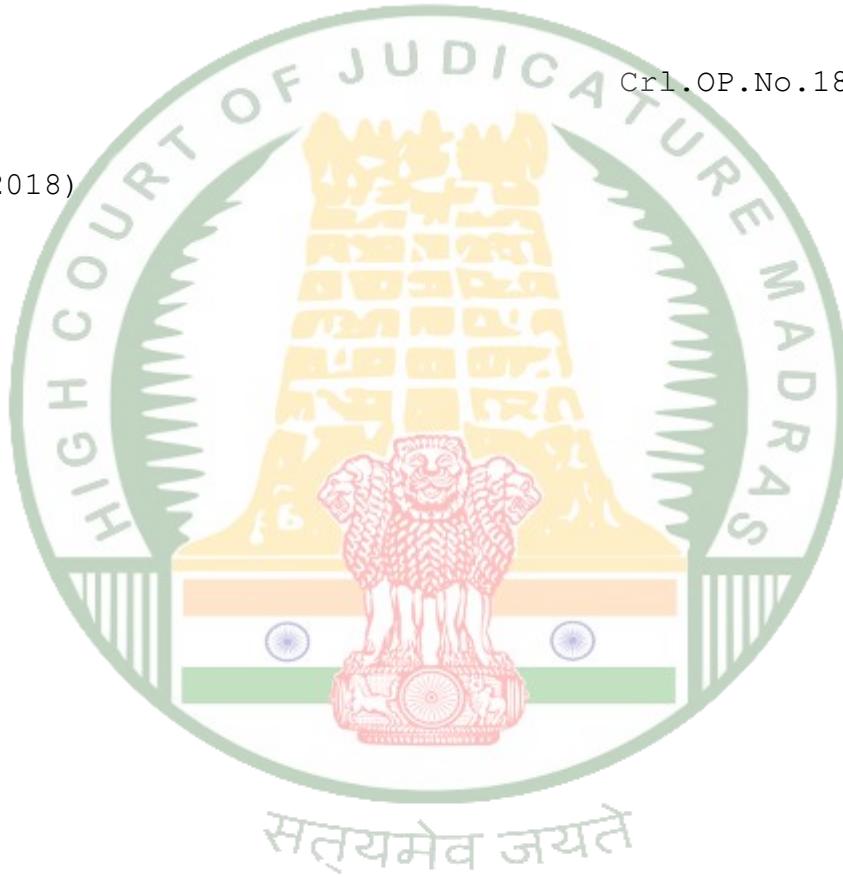
To

1. III Additional District and Sessions Court,
Erode at Gobichettipalayam.
2. The Judicial Magistrate No.I,
Gobichettipalayam.

+lcc to Mr.N.Manoharan, Advocate SR.No.50143

Cr1.OP.No.18730 of 2018

GN(01/08/2018)



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