

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26184 of 2018
and
Crl.M.P.Nos.15051 & 15052 of 2018

1. M/s.M.M.Paper Convertors,
Rep. By its Proprietor A.Subramanian
No.145/10, Balakrishnan Street,
Tondiarpet,
Chennai 600 081.

2.A.Subramanian ...Petitioners

-Vs-

B.Leela Mohan ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in Crl.M.P.No.5979 of 2018 in C.C.No.1699 of 2017 on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai and set aside the order dated 16.10.2018 as illegal.

For Petitioners : Mr.R.Ganesh Babu

ORDER

This Petition has been filed challenging the order passed by the Court below dismissing the application filed u/s.91 of Crpc.

2. The petitioner is an accused facing trial before the Court below for an offence u/s.138 of The Negotiable Instruments Act. The petitioner filed an application u/s.91 of Crpc for a direction to the respondent to produce the copy of the income tax assessment, Bank statement and also the original mortgage receipt of September 2016. In the Counter Affidavit filed by the respondent, the respondent has taken a categorical stand that he will produce the original mortgage receipts and also the

bank statements for two financial years of 2015 and 2017 respectively. The Court below has dismissed the petition filed by the petitioner on the ground that the documents sought for by the petitioner is not connected with the defence that has been taken by the petitioner in the proceedings u/s 138 of the Negotiable Instruments Act. The Court below has found that the petitioner is trying to fish for evidence for the purpose of rebutting the presumption.

3. The learned counsel for the petitioner drew the attention of the Court to the cross examination of P.W.1. In the course of cross examination, P.W.1 has categorically stated that he is an income tax assessee and the amount that has been paid to the petitioner has been shown in the income tax returns as well as in the books of accounts. The respondent has also taken a stand that those documents will be filed before the Court below at the appropriate stage. Based on this statement made in the course of cross examination, the present petition has been filed by the petitioner under section 91 of Crpc, directing the respondent to produce those documents.

4. The petitioner has already put sufficient questions to the respondent with regard to the availability of the documents. The respondent has also taken a specific stand that the loan transaction has been shown in the books of accounts as well as the income tax returns. The respondent has also taken the stand that those documents will be produced before the Court at an appropriate stage. It is now left to the respondent to produce those documents. If the respondent does not produce those documents in spite of its availability, it is always open to the Court below to draw the presumption u/s.114 (g) of the Indian Evidence Act. The petitioner cannot force the respondent to produce the documents. The petitioner at the best, can only make an attempt to make the respondent to produce the documents and thereafter it is for the respondent to produce those documents before the Court.

5. Sine the Presumption u/s.139 of the Negotiable Instruments Act is against the petitioner, the petitioner wants to establish the defence in all possible manner. The dismissal order passed by the Court below cannot be put against the petitioner at a future date. The issue that has been raised by the petitioner has to be considered independently by the Court below on its own merits and in accordance with law, at the time of final hearing. The dismissal of the petition filed by the petitioner and the confirmation of the same by virtue of this order, will not stand in the way of the petitioner to raise the same defence before the Court below in the course of the proceedings.

6. In the result, the order passed by the Court below is

hereby confirmed and this Criminal Original Petition is dismissed with the above directions. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mfa

To

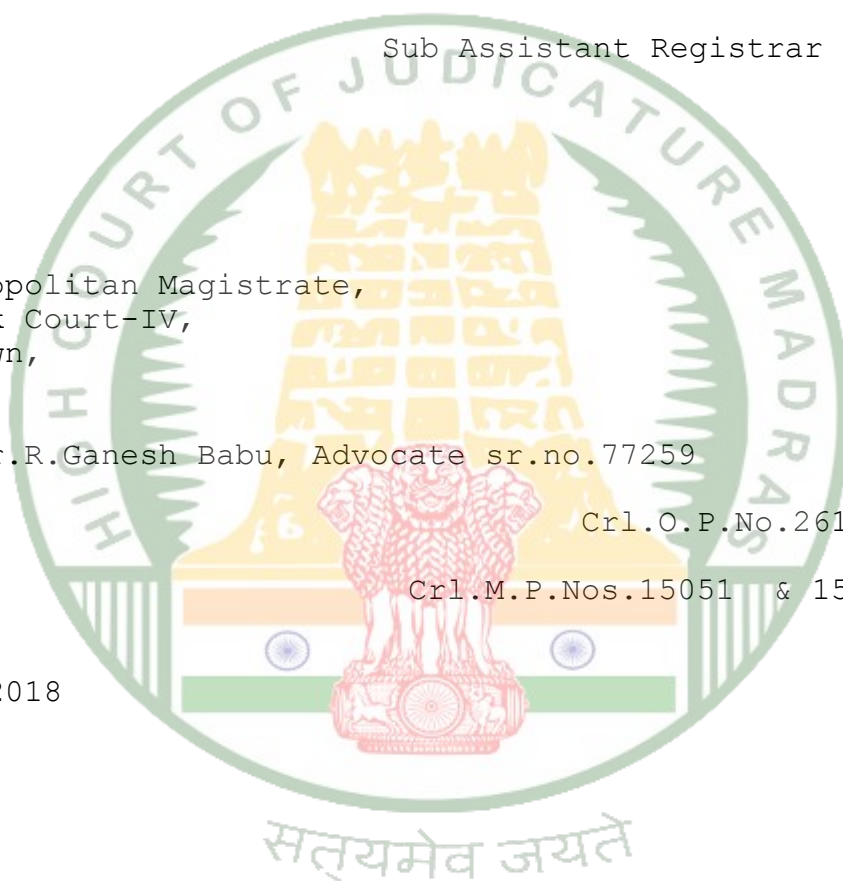
The Metropolitan Magistrate,
Fast Track Court-IV,
George Town,
Chennai.

+1cc to Mr.R.Ganesh Babu, Advocate sr.no.77259

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