



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.2651 of 2016

and

CRL.M.P.(MD)No.1305 of 2016

B.Murugesan

... Petitioner/Complainant

-Vs-

Mr.V.Vijaya Kumar

... Respondent/Accused

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to issue a direction to set aside the order in Cr.M.P.No.1228 of 2015 in S.T.C.No.130 of 2014, dated 29.12.2015 passed by the Fast Track Judge (Magisterial Level) No.II, Madurai within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.N.Vallinayagam

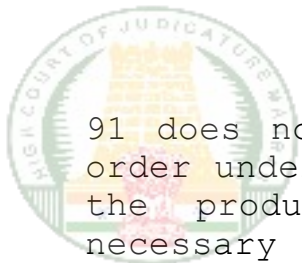
ORDER

This petition has been filed by the petitioner challenging the order passed by the Court below along with the application filed under Section 91 of Cr.P.C by the accused person directing the complainant to produce certain documents.

2.The learned counsel for the petitioner would submit that the S.T.C.No.130 of 2014 is of the year 2014 for an offence punishable under Section 138 of Negotiable Instruments Act. The complainant was examined on 30.01.2015 and thereafter, the case was repeatedly adjourned for cross examination. Thereafter, the accused person has filed the petition under Section 91 of Cr.P.C., in order to direct the complainant to produce certain documents.

3.The court below, by its order, dated 29.12.2015, had allowed the said petition without any discussion by merely stating that sufficient opportunity must be given to the parties in order to find out the truth.

4.The power conferred under Section 91 of Cr.P.C is a enabling provision which aims at arming the Court or any Officer in-charge of the Police Station to enforce and to ensure the production of any document which are necessary or desirable for the purpose of any investigation, enquiry, trial or other proceedings. Section



91 does not confer an absolute right. The *sine qua non* for an order under the said Section is on consideration of the court that the production of the document concerned is desirable and necessary for the purpose of the trial. The order of the Court below does not satisfy any of these requirements.

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5.This provision cannot be invoked by an accused person against the complainant and force the complainant to produce certain documents before the court. At the best the accused person can only put questions regarding the availability of the documents with the complainant and can make a request to the complainant to produce the document. If the complainant does not produce those documents, it is always open to the trial Court to draw an adverse inference under Section 114 of the Indian Evidence Act.

6.That apart the Honourable supreme court in the judgment reported in **State of Orissa Vs. Devendra Nathpathi** reported in **2004 AIR SC 6813** has held that Section 91 of Cr.P.C cannot be invoked to permit a roving or fishing enquiry. In the present case it is seen that the accused person has sought for various documents from the complainant only to build up his case.

7.The order passed by the court below is not in accordance with law and hence, the same is set aside. Accordingly, this Criminal Original Petition is allowed. It is made clear that if the documents that have been sought for by the accused person from the petitioner is not produced before the Court, the accused person can always work out his rights in accordance with law by asking to draw adverse inference, if a case to that effect is made out. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Fast Track Judge (Magisterial Level) No.II, Madurai.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.81346

+1cc to Mr.N.Vallinayagam, Advocate Sr.No.81852

TM

VB/SKN/SAR3/24.09.2018/2P/4C

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CRL.O.P. (MD) No.2651 of 2016
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