



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

CORAM:

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)Nos.323,324, 327 and 328 of 2018

and

Crl.M.P(MD) Nos.4489,4490,4541 and 4542 of 2018

M/s.Gowmari Cotton Mills
Through its Partner cum
Power of Attorney
Mr.K.S.Vishnusankar
Periyakulam Road
Oonjampatti
Theni Taluk
Theni District

... Petitioner in all Crl.Rc's

Vs.

1. Mrs. Surya Chakra Spinning Mills Pvt Ltd.,
Through its Managing Director,
No.141, Kothkkarar Thottam,
Erode -4

2. M.Loganathan

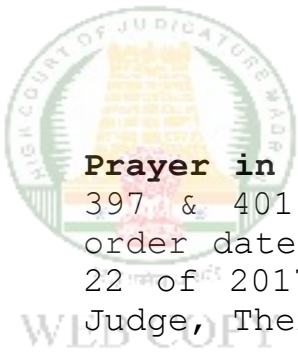
3. Latha

... Respondents in all Crl.Rc's

Prayer in Crl.R.C(MD) No.323 of 2018: Revision filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 07.03.2018 passed in Cr.M.P No.195 of 2017 in C.A.No. 31 of 2017 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

Prayer in Crl.R.C(MD) No.324 of 2018: Revision filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 07.03.2018 passed in Cr.M.P No.194 of 2017 in C.A.No. 32 of 2017 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

Prayer in Crl.R.C(MD) No.327 of 2018: Revision filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 07.03.2018 passed in Cr.M.P No.193 of 2017 in C.A.No. 23 of 2017 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.



Prayer in CrI.R.C(MD) No.328 of 2018: Revision filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 07.03.2018 passed in Cr.M.P No.192 of 2017 in C.A.No. 22 of 2017 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

For Petitioner : Mr.D.Nallathambi
(In all CrI.Rc's)
For Respondents : Mr.K.Govindarajan
(In all CrI.Rc's)

COMMON ORDER

These four revision petitions are directed against the dismissal of the petitions filed under section 391 of Cr.P.C to adduce additional evidence in the pending appeal filed by the complainant in four STC cases which ended in acquittal.

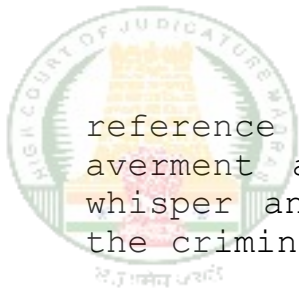
2. The grievance of the petitioner herein is that since the trial court has dismissed the complaint holding that there is no proof for an existing enforceable debt for which the alleged four cheques were given. In the appeal filed against the order of acquittal, he wanted to mark the plaint and the written statement copy in O.S.No.111 of 2000 which was pending between the complainant and the accused on the file of the District Munsif cum Judicial Magistrate, Perundurai, which will reveal existing enforceable debt at the time of issuing the subject cheques.

3. The contention of the revision petitioner is that in the said suit there is a specific pleading regarding money transaction between them and the debt payable by the accused. The plaint of the accused will lend proof of legally enforceable debt and cheques were issued to discharge the said enforceable debt.

4.The appellate court after considering the plea, held that under the garb of adducing additional evidence at the appellate stage, lacuna in the the prosecution case cannot be filled. Fishing out evidence at the appellate court impermissible.

5. The revision petitioner is aggrieved by the said observation since he is of the opinion that the pleading found in the plaint filed by the accused in O.S.No. 111 of 2000 will establish the enforceable debt.

6. The learned counsel for the respondent would submit that <https://hservices.ecourts.gov.in/hservices/> served by the revision petitioner herein is for permanent injunction whereas incidentally there are certain



reference about transaction of the goods supplied. The plaint averment and its denial in the written statement does not whisper anything about the cheques which are subject matter of the criminal complaint.

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7. Heard the counsels. The records perused.

8. The plaint in O.S.No.111 of 2000 on the file of the District Munsif cum Judicial Magistrate, Perundurai is presented on 19.07.2000. It is a suit for permanent injunction filed by the complainant / revision petitioner herein. In this plaint he has made certain averments in connection with goods sold and outstanding. The accused /respondent herein, as a defendant in O.S.No.111 of 2000 had filed counter in I.A.No. 417 of 2000 in O.S.No.111 of 2000 in which the averment regarding money due denied as cooked up the accounts. The money due as admitted by the plaintiff denied and no reference about the issuance of cheques to clear the admitted due or filing of private complaints for dishonouring these cheques. That apart pleadings of the suit which is not sought to be relied upon and additional documents never went for trial. The suit has been dismissed for default on 05.04.2003.

9. In the light of the above facts, this Court is not inclined to entertain these revision petitions since the stage at which the additional document sought to be produced is not only belated but also the additional documents which are now sought does not carry any probative value. Neither the statements of account mentioned in the plaint tested nor the maker of the admission examined. To take the said averment as admission and relevant, it has to go through the test of Section 17 and 21 of the Indian Evidence Act and clear the test.

10. An averment in a plaint not put to trial cannot be a piece of evidence for what so ever purpose in a criminal trial to prove or disprove the existence of a fact.

11. In the result, the Criminal Revision Petitions are dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)



To

The Additional District and Sessions Judge,
Theni at Periyakulam.

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+ 1 CC TO Mr.K.GOVINDARAJAN, ADVOCATE IN SR No. 83447
+ 1 CC TO Mr.D.NALLA THAMBI, ADVOCATE IN SR No. 83471

AAV

TE/PM/SAR-2 : 01/10/2018 : 4P/4C

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