



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2018

Delivered on : 09.03.2018

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) Nos.10984 & 10985 of 2013

and

M.P. (MD) Nos.1 and 1 of 2013 in both petitions

GAM.Dhandapani,
S/o.GA.Muthu Erulappan Chettiar,
Rep. by his brother and next friend
Power Agent,
GAM.Pounraj

... Petitioner
in both the Crl.O.Ps./
Respondent/Complainant

Vs.

Dr.N.Manimaran

... Respondent
in both the Crl.O.Ps./
Petitioner/Accused

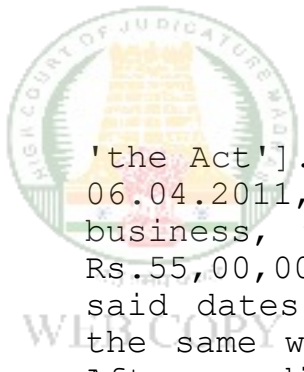
PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order passed in Cr.M.P.Nos.1098 and 1100 of 2012 in S.T.C.Nos.243 and 244 of 2011 respectively, on the file of the Judicial Magistrate (Fast Track) Court, Theni, dated 17.05.2013, set aside the same and allow the Criminal Original Petitions.

For Petitioner : Mr.B.Brijesh Kishore
(in both the Crl.O.Ps.)
For Respondent : Mr.S.Gokulraj
(in both the Crl.O.P.s)

COMMON ORDER

The petitioner herein is the complainant in S.T.C.Nos.243 and 244 of 2011 pending on the file of the Judicial Magistrate (Fast Track) Court, Theni.

2.The said cases were instituted against the respondent by way of filing private complaints for punishing him under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as



'the Act']. In the complaints, it is alleged that on 09.10.2010 and 06.04.2011, in order to meet out his urgent needs of his real estate business, the respondent availed hand loans of Rs.25,00,000/- and Rs.55,00,000/- respectively and issued post-dated cheques on the said dates. When the said cheques were presented for collection, the same were returned with an endorsement ''funds insufficient''. After sending statutory notice, the petitioner herein filed the said complaints. At the time of pending proceedings, the respondent herein filed applications before the said Court under Section 91 Cr.P.C., in which, he is seeking a direction to the petitioner for producing the Sale Agreements, dated 05.11.2008 and 20.02.2009 and the Partnership Agreement, dated 24.08.2009. The said applications were taken on file as Cr.M.P.Nos.1098 and 1100 of 2012 in S.T.C.Nos.243 and 244 of 2011 by the learned Judicial Magistrate (Fast Track Court), Theni, respectively, and after hearing both sides, the learned Magistrate passed an order, in which, she directed the petitioner to produce the documents, against which, these Criminal Original Petitions have been filed.

3.Before entering into the contention made by the learned counsel on either side, it is necessary to see Section 91 Cr.P.C., which reads as follows:-

''91.Summons to produce document or other thing.- (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.''



4. So, as per the said Section, if the Court feels that the document, which was mentioned in the application is necessary for deciding the case, issuing summons to the person, who is having the possession, for producing the documents is proper. Now, in these cases, the respondent being the accused filed applications under Section 91 Cr.P.C. and the same were ordered by the learned Magistrate, which are now under challenge.

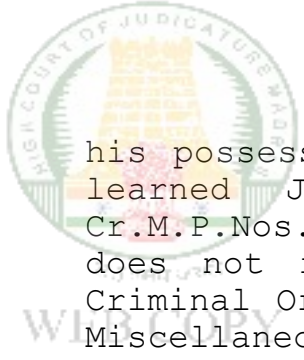
5. Believing that the petitioner/complainant is having the possession of the document, it was mentioned in the complaint. Further, on a cursory looking of the petition averments, it was mentioned by the petitioner as he himself and the respondent in the application is having business relationship in some joint venture real estate business, for a couple of years. So, only after having the knowledge that the petitioner/complainant is having the possession of the documents, the respondent eventually filed the applications. Apart from that, there is no clear-cut evidence that the petitioner/complainant alone having the possession of petition mentioned documents. Now, if the documents are not produced, then the respondent alone is having the duty to prove that the petition mentioned documents are in the custody of the petitioner/complainant. Even after holding that the petitioner is the holder of the documents, the Court cannot compel him to produce the same. It is a general rule, if a person holding the document, has refused to produce the same before the Court, only adverse inference can be drawn, otherwise, no other action is necessary to produce the said document.

6. In this context, it is relevant to extract Section 114(g) of the Indian Evidence Act, 1872, which reads as follows:-

''114. Court may presume existence of certain facts.-

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;''

7. Accordingly, if a person withholds a document and refused to produce the same before the Court, only adverse inference can be drawn. If otherwise, the Court cannot compel the other party to produce the particular document. In general, if a particular document is in possession of a party to the proceedings, giving a notice for production of the document is more than sufficient. Before that, the Court has to come to the conclusion that the person receiving the notice is with the possession of the document, otherwise, it is impossible to direct the other party to produce the documents. Accordingly, the Court below found that Ex.P.9 series that has been marked on behalf of the petitioner/complainant contains ~~xxxx~~ copies of the documents sought for and those documents appears to be registered documents and directed the petitioner/complainant to produce the said documents, which are in



his possession. Hence, the orders dated 17.05.2013, passed by the learned Judicial Magistrate (Fast Track Court), Theni, in Cr.M.P.Nos.1098 and 1100 of 2012 in S.T.C.Nos.243 and 244 of 2011, does not require any interference by this Court. Hence, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate
(Fast Track Court),Theni.

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MV:KKR:SAR1:22/03/2018/4P/2C

**Pre-delivery Common order in
Cr1.O.P. (MD)Nos.10984 & 10985 of 2013**

09.03.2018