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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2018

Delivered on : 15.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.12770 of 2013

and

M.P.(MD)No.1 of 2013

C.Chandran ... Petitioner/Respondent/
Complainant

Vs.

Dr.Sree Devi ... Respondent/Petitioner/
Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 26.06.2013, passed in Crl.M.P.No.1448 of 2013 in C.C.No.187 of 2012, on the file of the Judicial Magistrate Court No.I, Fast Track Court No.I (Magistrate Level), Nagercoil, and set aside the same by allowing the Criminal Original Petition.

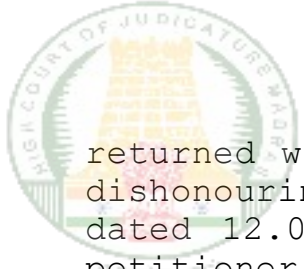
For Petitioner : Mr.P.T.Ramesh Raja
for Mr.M.Saravanan

For Respondent : No Appearance

ORDER

The petitioner herein is the complainant in C.C.No.187 of 2012 on the file of the Judicial Magistrate No.I, Fast Track Court, Nagercoil. He filed this Criminal Original Petition, seeking the relief to set aside the order dated 26.06.2013, passed in Cr.M.P.No.1448 of 2012 in C.C.No.187 of 2012.

2.The case of the petitioner is that the respondent being the accused obtained a sum of Rs.6,00,000/- by way of loan to tideover her domestic need and thereafter, in order to discharge her liability, she had given a Cheque bearing No.002044, drawn on Trivanathapuram District Co-operative Bank Ltd., Kunnukuzhy Branch, Trivandrum, dated 04.03.2011, for a sum of Rs.6,00,000/-. The petitioner presented the abovesaid cheque on 09.03.2011 through HDFC Bank, Nagercoil Branch. But, the said cheque was



returned with an endorsement 'funds insufficient'. In order to dishonouring the cheque, the Bank concerned issued a return memo, dated 12.03.2011. After receiving the same, on 07.04.2011, the petitioner sent a registered notice through his Lawyer to the respondent/accused, calling upon her for payment of the said amount due on the dishonoured cheque, within 15 days from the date of receipt of notice. The said notice was received by the respondent on 12.04.2011. Thereafter, she had not paid the said amount within the time as stipulated in the notice. Hence, the petitioner has filed a private complaint before the Judicial Magistrate Court No.II, Nagercoil, and during the time of trial, after examining the petitioner's side evidence, when the case was posted for examination of respondent's side evidence, the respondent filed an application under Section 91 Cr.P.C., seeking the relief to call for the records pertaining to call details of BSNL Mobile No.9447033972, Trivanathapuram Telecom Circle. After receiving counter from the petitioner, the learned Judicial Magistrate No.I, Nagercoil, allowed the application. Aggrieved over the same, the petitioner herein has filed this Criminal Original Petition to set aside the said order.

3.Now, on going through the reasons stated by the respondent in the application, it is to be noted that during the time of evidence given by P.W.2, he gave evidence as at the time of availing loan, he contacted the respondent through the abovesaid Mobile number. Further, he deposed that frequently he had contacted the respondent. During the time of considering the said application, the learned Judicial Magistrate No.I, Nagercoil, has held as follows:-

'8. in the light of the decisions of the Hon'ble Supreme Court and our High Court, 'wherein held that petition u/s 91 Cr.P.C. to prove the petitioner case and for rebuttal of the presumption u/s 138 of N.I. Act and right of the accused cannot be negatived' and further it seen from the case it is clear that the petitioner had not adopted dilatory tactics. Therefore, in the interest of justice, the petition is to be allowed.'

4.Accordingly, the learned Judicial Magistrate No.I, Nagercoil, considering the principles laid down in Section 91 Cr.P.C., straightaway without mentioning the particulars of the verdict given by this Court as well as by the Hon'ble Supreme Court, allowed the application. According to Section 91(1) Cr.P.C., the Presiding Officer before passing any order must come to a conclusion whether a particular document, which is mentioned in the application, is necessary for deciding the issue involved, at the time of trial. Now, in the present case, the only reason



stated by the petitioner is that P.W.2 was having frequent phone calls with the respondent through the abovesaid mobile number. Apart from that, nothing was averred with regard to the involvement made in between the petitioner/complainant.

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5.Now, it is to be noted that P.W.2 was examined on the side of the petitioner. Even assuming the call details are received from the BSNL, Trivananthapuram, that particulars did not show the conversation held between P.W.2 and the respondent/accused. Making a call to other person is not at all helpful to hold that the calls have been made by P.W.2 only with regard to the alleged debt, which was mentioned in the complaint. So, in my considered opinion, the said document, in no way helpful to prove the case of the respondent.

6.It is true that as per Sections 138, 139 and 118 of the Negotiable Instruments Act, 1881, the accused has to prove that the cheque had not been issued for any debt or liability. But, in this case, with regard to the above situation, the call details mentioned by the respondent are not at all necessary. Hence, the order dated 26.06.2013, passed in Crl.M.P.No.1448 of 2013 in C.C.No.187 of 2012, by the learned Judicial Magistrate No.I, Fast Track Court, Nagercoil, is set aside and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Fast Track Court No.I [Magistrate Level],
Nagercoil.

+1 cc to Mr.M.Saravanan, Advocate SR No.55400

order in
Crl.O.P. (MD)No.12770 of 2013
15.03.2018
(1/2)

PK/RR/SAR-1/04.06.2018 : 2P/3C