



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) Nos.4755, 4756 and 4757 of 2013
and
M.P. (MD) Nos.1, 1 and 1 of 2013

V.Muthusubramanian ... Petitioner in all Crl.O.Ps.
Vs.

S.Pandian ... Respondent in all Crl.O.Ps.

PRAYER in Crl.O.P. (MD) No.4755 of 2013: The Petition filed under Section 482 of Cr.P.C. to call for the records relating to the impugned order of the learned Judicial Magistrate I, Fast Track Court, at Magisterial Level, Madurai passed in Crl.M.P.No.868 of 2012 in S.T.C.No.180 of 2012 and set aside the same.

PRAYER in Crl.O.P. (MD) No.4756 of 2013: The Petition filed under Section 482 of Cr.P.C. to call for the records relating to the impugned order of the learned Judicial Magistrate I, Fast Track Court, at Magisterial Level, Madurai passed in Crl.M.P.No.869 of 2012 in S.T.C.No.181 of 2012 and set aside the same.

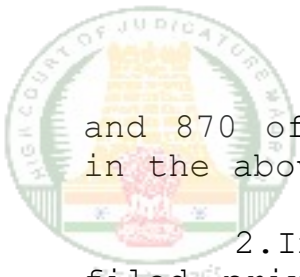
PRAYER in Crl.O.P. (MD) No.4757 of 2013: The Petition filed under Section 482 of Cr.P.C. to call for the records relating to the impugned order of the learned Judicial Magistrate I, Fast Track Court, at Magisterial Level, Madurai passed in Crl.M.P.No.870 of 2012 in S.T.C.No.191 of 2012 and set aside the same.

For Petitioner
(in all Crl.O.Ps.) : Mr.P.T.Ramesh Raja
for M.Saravanan

For Respondent
(in all Crl.O.Ps.) : Mr.K.M.Pricella Jancy
for R.Venkatesan

COMMON ORDER

The petitioner herein is the complainant in S.T.C.No.180, 181 and 191 of 2012 on the file of the Judicial Magistrate Court No.I, Fast Track Court, Madurai. He filed these petitions to set aside the orders, dated 14.02.2013, passed in Crl.M.P.Nos.868, 869



and 870 of 2012, which are all the miscellaneous petitions filed in the abovesaid cases.

2.Initially, the petitioner in the position of complainant filed private complaints against the respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. After examining himself as P.W.1, he filed petitions under Section 311 Cr.P.C. for issuing summons to the Branch Manager, Indian Bank, Tallakulam Branch, American College Buildings, Madurai, for producing the relevant document, which contains the date on which, the cheque books containing the cheques under dispute were received by the respondent/accused from the said Bank and also to give evidence to that effect.

3.After receiving the said petitions, the same were taken on file as CrI.M.P.Nos.868, 869 and 870 of 2012 and thereafter, after giving sufficient opportunity to the respondent, the learned Judicial Magistrate No.I, Madurai, dismissed the said petitions. Aggrieved over the same, the petitioner herein has filed the present Criminal Original Petitions.

4.Now, the learned counsel appearing for the petitioner made a submission as according to the defence taken by the respondent, the impugned cheques were received by the petitioner/complainant in the year 1999. On the other hand, the case has been filed by the petitioner mentioning as the cheques have been received by the petitioner in the year 2004. Only for proving the fact that the cheques were received by the petitioner in the year 2004, the evidence of the abovesaid Branch Manager and the Registers pertaining to the issuance of cheque books to the parties are necessary. Without considering the ambit and procedure laid down under Section 311 Cr.P.C., the learned Judicial Magistrate No.I, Madurai, dismissed the petitions, which is purely illegal.

5.On the other hand, the learned counsel appearing for the respondent submitted that according to Section 139 of the Negotiable Instruments Act, the presumption is in favour of the petitioner/complainant and therefore, summoning the Branch Manager is not necessary to find out the issue involved in these cases.

6.Upon considering the submissions made by the learned counsel on either side, this Court comes to the conclusion as even though according to Section 139 of the Negotiable Instruments Act, the presumption is in favour of the petitioner/complainant, it is necessary to find out whether the cheques have been received by the petitioner/complainant from the respondent/accused in the year 2004 or have been received by the petitioner as a security for the ~~debt~~ ^{debt} of the respondent in the year 1999. So, the issue has to be settled only by way of evidence from the competent person, viz., the Branch Manager, who issued the cheques to the



respondent. Further, in **Natasha Singh Vs. Central Bureau of Investigation** reported in (2013) 5 SCC 741, the Hon'ble Supreme Court has held as follows:

"8. Section 311 Cr.P.C. empowers the Court to summon a material witness, or to examine a person present at 'any stage' of 'any enquiry', or 'trial', or 'any other proceedings' under Cr.P.C, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, Cr.P.C. has conferred a very wide discretionary power upon the Court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the Court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The Court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the Court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

10. In **Mohanlal Shamji Soni V. Union of India** this Court examined the scope of Section 311 Cr.P.C, and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the Court to prove a fact, or a point in issue. However, the Court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The Court has a duty to determine the truth, and to render a just decision. The same is also the object of Section 311 Cr.P.C, wherein the Court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

7. Furthermore, in a case of **Ram Chander Vs. The State of Haryana** reported in **AIR 1981 Supreme Court 1036 : 1981 Cri.L.J. 609**, the Hon'ble Supreme Court has held as follows:



''2.The adversary system of trial being what it is,there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:

'Every Criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172 (2) of the Code of Criminal Procedure enables the Court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial''. (Sessions Judge, Nellore V.Intna Ramana Reddy, ILR (1972) Andh Pra 683).'

3.With such wide powers the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent.

8.So, as per the ratio laid down in the abovesaid two cases, the ambit and scope of Section 311 Cr.P.C., is very wide and it can be used for the purpose of identifying the truth. The power of the Court is plenary to summon or even to recall any witness at any stage of the case, if the Court considers it necessary for a just decision. Therefore, the prayer sought by the petitioner is a reasonable and justifiable one. Hence, the

https://hoseviser.courts.gov.in/cr/04s/02.2013, passed in CrI.M.P.Nos.868, 869 and 870 of 2012 in S.T.C.No.180, 181 and 191 of 2012 respectively, by the learned Judicial Magistrate No.I, Fast Track Court, Madurai, are



set aside and the Criminal Original Petitions are allowed.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Fast Track Court, (Magisterial Level)
Madurai.

+1cc to Mr.M.Saravanan, Advocate Sr.No.48905

GNS/SMN2

VB/SV/MMS/SAR2/23.03.2018/5P/3C

**Common order in
Crl.O.P. (MD) Nos.4755, 4756 and 4757 of 2013
and M.P. (MD) Nos.1, 1 and 1 of 2013
14.02.2018**