

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.20495 of 2019
and
Crl.M.P.No.10538 of 2019

A.V.HaneefaPetitioner/Accused

vs.

J.Thangamani ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order dated 16.07.2019 passed in C.M.P.No.1850 of 2019 in STC.No.223 of 2018 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Salem and to allow the Criminal Original Petition.

For Petitioner : Mr.C.Prabakaran

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner under Section 91 of Cr.P.C. to direct the respondent to furnish the bank particulars in order to issue summons to the bank manager and to examine him.

2.The petitioner is facing trial before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The complainant had examined himself as PW1 and he was also cross examined and the petitioner was questioned under Section 313 of Cr.P.C. The case was at the stage of defence evidence. At that stage, the petitioner filed the petition under Section 91 of Cr.P.C. seeking for the particulars of the bank account of the complainant.

3.The Court below dismissed the petition mainly on the ground that the bank particulars are already available in Ex.P2 which has already been marked before the Court below and that the petitioner is only trying to drag on the proceedings.

4.The learned counsel for the petitioner submitted that the petitioner wanted the bank particulars of the complainant in order to establish the fact that the petitioner has already discharged the entire debt/liability to the complainant. The learned counsel further submitted that since the burden of proof is upon the accused, the same needs to be rebutted under Section 139 of the Negotiable Instruments Act and therefore, an opportunity must be given to the petitioner to examine the bank manager.

5.This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials available on record.

6.If the petitioner had really discharged the entire debt/liability and the same is reflected in the bank account of the complainant, the easiest way for the petitioner to establish the said fact is by providing the particulars and by marking the documents through which the amount was paid to the complainant. If really the amount has been paid and it is reflected in the bank account of the respondent, the payment would have been made by way of cheque or demand draft or bank transfer. It does not require the examination of bank manager of the bank in which the complainant is having his account, for this purpose.

7.This Court does not find any illegality or infirmity in the order passed by the Court below and there is no ground to interfere with the same.

8.In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in STC.No.223 of 2018 within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

-s/d-
सत्यमेव जयते

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

vs

To

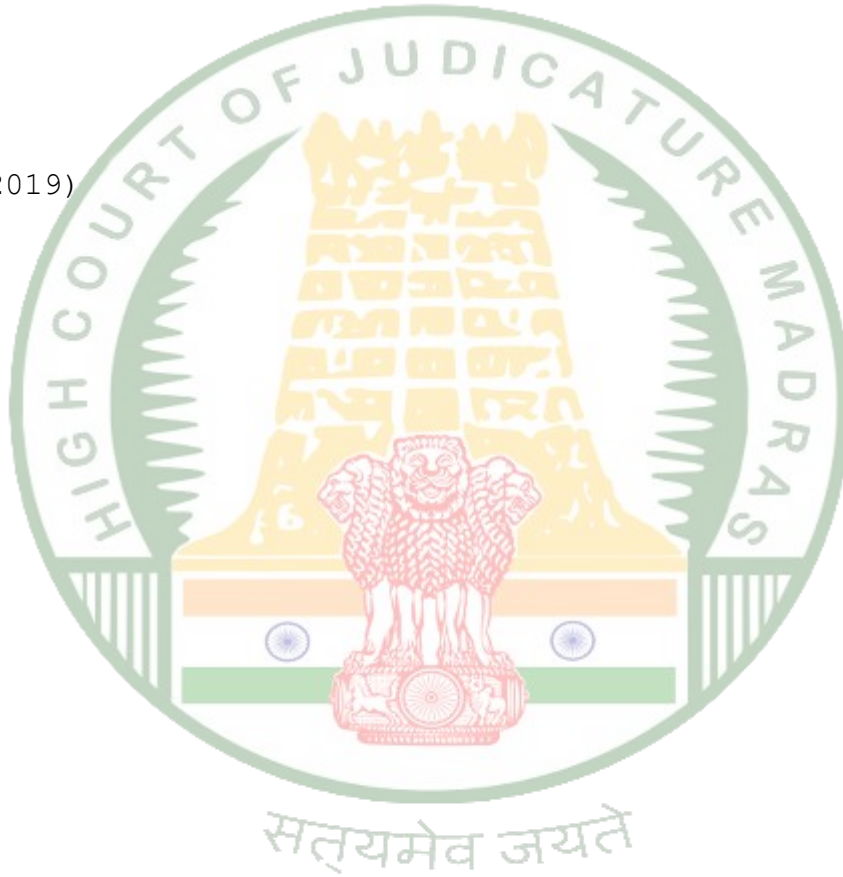
1.The Special Judicial Magistrate,
Special Court for Land Grabbing Cases,
Salem.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.C.Prabakaran, Advocate sr 65785.

CrI.O.P.No.20495 of 2019
and
CrI.M.P.No.10538 of 2019

SV(CO)
SP(28/08/2019)



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