

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.10928 of 2017
and
Crl.M.P.No.7211 of 2017

1.Sri Avina Paper and Board Private Limited,
S.F.No.4699/2, Mudalimadaiyankadu,
Pallakkapalayam - 637303,
Thiruchengode Taluk,
Namakkal District, Tamil Nadu.

2.Ramasamy Palani Gounder

3.Muthukumaran Ramasamy

4.Smt.Natarajan Tamilselvi

5.Vella Gounder Nallaiyan

6.Sri Rajagounder Lakshmi

... Petitioners

Vs.

V.C.R.Finance
Rep. by its Managing Partner,
V.C.Ravichandran,
No.40-A, m Kamarajar Nagar,
Chinnathirupathi,
Salem - 8.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to set aside the order dated 21.04.2017 made in
Crl.M.P.No.3790 of 2016 in S.T.C.No.195 of 2014 on the file of
the Judicial Magistrate No.IV, Salem.

For Petitioners : Mr.B.Kumarasamy

For Respondent : Mr.P.Jagadeesan

O R D E R

This Criminal Original Petition has been filed against the order passed by the Judicial Magistrate No.IV, Salem, on 21.04.2017, in CrI.M.P.No.3790 of 2016 in S.T.C.No.195 of 2014, allowing the application filed under Section 91 Cr.P.C., directing the accused persons to furnish certain documents.

2.The petitioners are facing trial before the Court below for the offence under Section 138 of the Negotiable Instruments Act. A1 is the company, A2 is the Managing Director and signatory of cheques and A3 to A6 are the Directors of the company. The complainant examined himself as P.W.1 and he was also cross-examined. The accused persons were questioned under Section 313 Cr.P.C. and the case was at the stage of defence witnesses. A2 was examined as D.W.1 and he was also cross-examined by the complainant. At that stage, the present application came to be filed by the complainant under Section 91 Cr.P.C. to direct the accused persons to produce nearly nine documents. This application has been allowed by the Court below on the ground that the accused persons have not denied the existence of those documents and it will be relevant to call for those documents in order to arrive at a just decision in the case.

3.The learned counsel for the petitioners submitted that the complainant has put forward a very specific case to the effect that A3 to A6 are Directors of the company and are in-charge of and responsible for the day-to-day affairs of the company. It is for the complainant to prove the same and the complainant cannot attempt to prove his case through the defence by asking the accused persons to furnish documents for the purpose of establishing the case of the complainant. The learned counsel further submitted that the documents that have been directed to be furnished by the Court below, will not absolutely have any bearing on the facts of the present case and the specific stand that has been taken by the complainant in the complaint filed before the Court below. The learned counsel concluded his arguments submitting that the Court below has allowed the application without adducing proper reasons and in a mechanical fashion.

4.The learned counsel for the respondent submitted that the Court below has applied its mind and has passed the order and the Court below has specifically found that those documents are necessary for the purpose of enabling the Court below to come to a fair decision. The learned counsel further submitted that the availability of those documents has not been denied by the accused persons. Therefore, no prejudice will be caused to the accused persons by producing the documents sought for by the

complainant. The learned counsel also brought to the notice of this Court, the stand taken by D.W.1 at the time of cross-examination, wherein, he has stated that, he is the only person who is responsible for running the day-to-day affairs of the company. The learned counsel therefore submitted that, it is now for the complainant to establish the fact that A3 to A6 are also involved in the day-to-day affairs of the company and therefore, the documents sought for by the respondent will clearly establish the said fact.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The complainant has taken a specific case in the complaint that, A3 to A6, who are the Directors of A1 company, are involved in the day-to-day affairs of the company. Having taken such a stand, the complainant cannot be allowed to prove it through the defence by asking the accused persons to furnish documents. The Court below lost sight of this vital fact. Even if the accused persons fail to furnish the documents, after being directed to produce the same, the Court below cannot force the accused persons to furnish the documents and therefore, it will be left open to the Court below to come to its own conclusion based on appreciation of evidence. At any rate, the application filed by the complainant under Section 91 Cr.P.C. asking the accused persons to produce certain documents in order to prove his case, can never be maintained and should not have been entertained by the Court below.

7.In the result, the order passed by the Judicial Magistrate No.IV, Salem, on 21.04.2017, in CrI.M.P.No.3790 of 2016 in S.T.C.No.195 of 2014, is hereby set aside and this Criminal Original Petition is accordingly allowed. Consequently, connected Miscellaneous Petition is closed. The Court below is directed to complete the proceedings in S.T.C.No.195 of 2014, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mkn

To

The Judicial Magistrate No.IV,
Salem.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.57614
+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.57243

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BS (CO)
CS/28/08/2019