

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.07.2019
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.13355 of 2017
in Crl.M.P.No.8648 of 2017

S.Sakthi Arunachalam

...Petitioner/Accused

Vs.

P.Sivamani

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to set aside the order made in C.M.P.No.2530 of 2017 in S.T.C.No.840 of 2016, dated 23.05.2017, on the file of the Judicial Magistrate No.I, Pollachi, Coimbatore District.

For Petitioner : M/s.C.Veerarahavan

For Respondents : M/s.G.Ponnambalathiyagaraja

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed under Section 91 of Cr.P.C, to call upon the respondent/complainant to produce the bank account for the period from 27.10.2015 to 26.01.2016.

2. The petitioner is facing trial for an offence under Section 138 of Negotiable Instrument Act before the Court below. The petitioner based on the submission made by the respondent, during the course of the cross examination has filed the present application under Section 91 of Cr.P.C., to direct the respondent to produce the bank account for a period of three months. The Court below has dismissed the petition mainly on the ground that the petitioner is trying to drag on the proceedings and that the respondent has taken a very specific stand in the complaint that he has lent the money which he had kept in his house.

3. The learned counsel for the petitioner submitted that the respondent does not have the wherewith to lend the petitioner a sum of Rs.3,00,000/-. The learned counsel submitted that the petitioner want to establish this fact and therefore, he had filed an application under Section 91 of

Cr.P.C, to direct the respondent to furnish the bank account for a period of three months.

4. The learned counsel for the respondent submitted that the bank account statement is irrelevant for the purpose of deciding this case, since the respondent has taken a specific stand in the complaint that he had handed over the cash that was available at his house. Therefore, having taken such a stand, there is no requirement to produce any bank account in this case.

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

6. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below thought it fit to dismiss the application filed under Section 91 of Cr.P.C, mainly relying upon the stand of the respondent/complainant in the complaint. The Court below thought that the production of the account for a period of three months will have no impact on the specific stand taken by the respondent/complainant.

7. The petitioner is taking a defence that he has not borrowed any amount from the respondent and that the respondent does not have the financial capability to lend a sum of Rs.3,00,000/- to the petitioner, and if really, he has the financial capacity, the bank account will reveal the same. Therefore, the petitioner wants the respondent to produce the bank account statement for three months. The respondent is not willing to produce the statement in view of the specific stand taken by him in the complaint. The respondent cannot be compelled to produce the account statement.

8. Ultimately, it is for the Court below to draw its own inference based on the materials collected in the course of the trial and it involves appreciation of evidence.

9. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in S.T.C.No.840 2016, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Pollachi,
Coimbatore District.

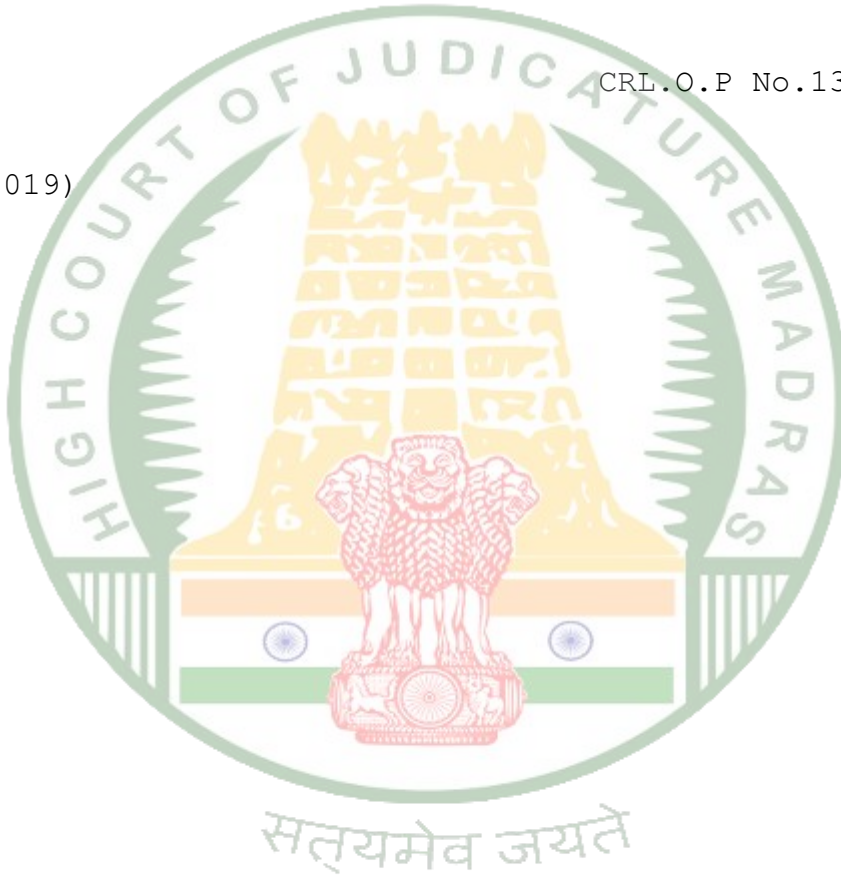
2. The Public Prosecutor,
High Court of Madras.

+lcc to Mr.C.Veeraraghavan, Advocate, S.R.No.60894

+lcc to Mr.G.Ponnambalathiyagaraja, Advocate, S.R.No.60903

CRL.O.P No.13355 of 2017

AD(CO)
SP(29/08/2019)



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