



CrI.O.P. (MD) Nos. 18997 and 18998 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

CrI.O.P. (MD) Nos. 18997 and 18998 of 2019

and

CrI.M.P. (MD) Nos. 11164, 11166, 11167 and 11168 of 2019

WEB COPY

M. Anandan ... Petitioner in both petitions

-Vs-

T. Pitchaimani ... Respondent in both petitions

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to set aside the order of learned Judicial Magistrate, FTC Magistrate Level, Madurai, dated 23.09.2019 made in Cr.M.P. Nos. 1998 and 1997 of 2019, respectively in S.T.C. No. 74 of 2012 and to direct learned Judicial Magistrate, FTC Magistrate Level, Theni to call for the daily attendance record of the complainant from the president or the secretary of Theni Co-operative Sales Society.

For Petitioner
(in both petitions) : Mr. B. Jeyakumar

For Respondents
(in both petitions) : Mr. S. G. L. Rishwanth

COMMON ORDER

By consent of both counsel, these petitions have been taken up for adjudication.

2. These Criminal Original Petitions have been filed seeking to set aside the order of the learned Judicial Magistrate, Fast Track Court, Magistrate Level, Theni, dated 23.09.2019 made in Cr.M.P. Nos. 1997 and 1998 of 2019 in S.T.C. No. 74 of 2012 and to direct the learned Judicial Magistrate, FTC Magistrate Level, Theni to call for the daily attendance record of the complainant from the president or the secretary of Theni Co-operative Sales Society.

3. The petitioner is facing trial in S.T.C. No. 74 of 2012, for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act. The case of the respondent/complainant is that the petitioner borrowed a sum of Rs. 3,00,000/- from the respondent/complainant as hand loan on 10.05.2019 and on demand by the respondent/complainant to return the said sum, the petitioner

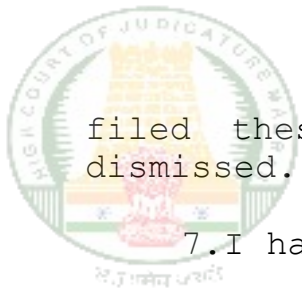


has given a cheque to him (i.e.) Axis Bank Cheque No.088523 for a sum of Rs.3,00,000/-, dated 14.08.2012. Since the cheque was dishonoured on presentation, the respondent/complainant sent a legal notice to the petitioner on 14.09.2012. In spite of receipt of such notice, the petitioner has not repaid the amount and thereby, the respondent filed the complaint under Section 138 of the Negotiable Instruments Act. During at the stage of defence, the petitioner/accused had filed a petition in Cr.M.P.No.1998 of 2019, under Section 91 of Cr.P.C, before the learned Judicial Magistrate, FTC Magistrate Level, Theni, seeking to issue summons to the President or the Secretary of the Co-operative Sales Society, Theni or competent person to produce the attendance register of the complainant to prove the character of the complainant that whether he had attended the Court after obtaining permission from the Society or not. Further, the petitioner had filed another petition in Cr.M.P.No.1997 of 2019 seeking for a direction to the concerned authority to produce the income tax returns of the complainant.

4.The trial Court observing that during the cross examination P.W.1, had deposed that whenever he had come to Court, he had taken leave and also observed P.W.1's admission that he had not disclosed about the loan given to the petitioner in his income tax returns and that he has income from 300 bags of paddy through agricultural land and finding that the defence of the accused does not have any relevance to summoning of those documents, has dismissed the petitions. Against such dismissals, the present petitions have been filed.

5.The learned counsel for the petitioner would submit that the respondent/complainant is a staff working in the Co-operative Sales Society at Theni and that he is an income tax assessee and thereby, the documents are relevant to prove the character of the respondent/complainant as well as to prove that he did not have sufficient source to pay the amount of Rs.3,00,000/- to the petitioner.

6.Per contra, the learned counsel for the respondent/complainant would submit that as per Section 91 of Cr.P.C., summons can be issued when the Court considers that production of any documents is necessary or desirable for the purpose of trial and that the party who prays for issuance of summons for production of such document has to necessarily demonstrate before the court that production of document is a relevant material for arriving at a just decision in the case. The trial Judge finding that the petitioner/accused has not established that these documents are necessary or desirable for arriving at a just decision of the case, has rightly dismissed the petitions. The trial Court finding that the petitioner had



filed these petitions only to prolong the case, has rightly dismissed. Thereby, he seeks the dismissal of these petitions.

7.I have gone through the orders passed by the trial Court.

8.The trial Court after analyzing the evidence and materials on record, had found that the documents are not relevant for arriving at a just decision of the case. Further, the trial Court has also taken into consideration the admission of the respondent/complainant that the loan amount was not disclosed in his income tax returns and thereby, found that the production of the income tax returns and documents despite admission are not relevant for the case. Further, the production of the attendance register is also not relevant. This Court is of the opinion that the trial Court has rightly dismissed these petitions and this Court do not find any infirmity in the order passed by the trial Court. Hence, these Criminal Original Petitions are dismissed.

9. It is seen that the case in S.T.C.No.74 of 2012 is pending from the year 2012. Therefore, the learned Judicial Magistrate, Fast Track Court, Magistrate Level, Theni, is directed to complete the trial and deliver judgment within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

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Sub Assistant Registrar (CS)

sjj

To

The Judicial Magistrate, Fast Track Court,
Magisterial Level, Theni.