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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2021

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.11706 & 14355 of 2017 &
Crl.M.P.No.7663 of 2017

1. M/s.New International House of Travels
No.71, H.I.G.Colony,
RMV, II Stage,
Bangalore - 560 094.

2. Ashwin Ajila ... Petitioners in both Crl.O.P.'s

Vs

M/s.Sree Gokulam Chits & Finance
Company Pvt. Ltd.
Rep. by Mr.K.Satheesh Kumar,
No.66, Arcot Road,
Kodambakkam,
Chennai - 600 024.

... Respondent in both Crl.O.P.'s

PRAYER IN CRL.O.P.NO.11706 OF 2017:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 16.06.2017 passed in Crl.M.P.No.6217 of 2016 in C.C.No.10730 of 2007 on the file of the learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai and direct the trial Court to recall the 2nd petitioner for marking the statement of accounts of the 1st petitioner firm on a date fixed by this Hon'ble Court.

PRAYER IN CRL.O.P.NO.14355 OF 2017:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order dated 16.06.2017 passed in Crl.M.P.No.6231 of 2016 in C.C.No.10730 of 2007 on the file of the learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai and direct the trial Court to reopen the case for examination of witnesses and summon the witnesses Executive Director Mr.Baiju Gopalan of respondent company and another witness Mr.O.C.Chandran to examine them as court witness on a date fixed by this Hon'ble Court.



For both Crl.O.P.'s:

For petitioners : Mr.G.Ravi Kumar

For Respondent : Mr.T.C.Sajith Babu
for M/s.Prince Associates

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C O M M M O N O R D E R

These petitions have been filed to set aside the orders dated 16.06.2017 passed in Crl.M.P.Nos.6217 and 6231 of 2016 in C.C.No.10730 of 2007 on the file of the learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai dismissing the petition filed under Section 311 of Cr.P.C. to mark certain documents through the DW.1. The documents sought to be introduced are the statement of accounts and passbook to show that towards the cheque, a sum of Rs.90,00,000/- has been paid. Along with this petition, it appears that a petition to call for certain documents has been filed under Section 91 of Cr.P.C.

2. The learned Judicial Magistrate taking note of the pendency of the case and delay in filing these petition, after the completion of evidence, had rejected the petitions mainly on the ground of delaying tactics.

3. The contention of the learned Counsel for the petitioner is that to show that he has also discharged Rs.90,00,000/-, these documents are relevant before the trial Court. Though he is not pressing the separate petition filed to send for the documents under Section 91 of Cr.P.C. and also made an endorsement to that effect, he confined to recall DW.1 to mark the bank documents to show that there are some payments made towards the cheque which were subject matter of the Negotiable Instruments Act.

4. Therefore, it is submitted that merely because of the delay, his valuable right to establish and dislodge the legal presumption cannot be taken away. Those documents have been unearthed only after the evidence was completed. Therefore, mere delay itself cannot be ground to non suit the petitioner and he has to establish his case before the trial Court. Hence, prayed for allowing this petition.

5. Whereas the learned Counsel for the respondent would contend that after defence evidence was closed in the year 2009, this petition has been filed in the year 2016. Therefore, this itself clearly indicate that only in order to protract the proceedings, this petition has been filed. Further, it is his contention that the cheque transaction with regard to previous civil suits are pending in City Civil Courts, Bangalore and what was sought to be introduced in this case is that the documents

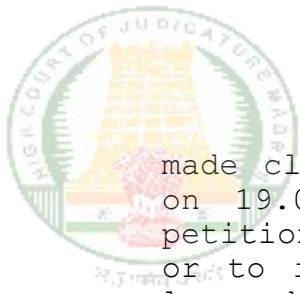


in respect of concluded transactions. Hence, submitted that the learned Magistrate took note of the delay caused by the petitioner herein and dismissed the petition and further it is his contention that the documents sought to be filed through DW.1 is no way relevant to the case arising under Section 138 of the Negotiable Instruments Act. Hence, opposed the petition.

6. I have perused the entire materials. These petitions have been originally filed one for recall of DW.1 and file bank passbook and statements and another under Section 91 to send for certain documents from the possession of the defacto complainant. Taking note of the delay in the matter as the DW.1 has been examined long back and when the matter is posted for arguments, these petitions have been filed, the learned Metropolitan Magistrate was of the view that the delay is caused by the petitioner and hence, he cannot be allowed to continue and dismissed the applications. Though from the orders of the learned Judicial Magistrate appears that the delay was huge in filing the petition, this Court is of the view that the entire proceedings relate to the Negotiable Instruments Act. It is the specific contention of the accused that towards the liability, he has already discharged Rs.90,00,000/-. That apart, civil suits are also pending in respect of the property of around 148 acres sold by the defacto complainant and the above civil suit is pending before the City Civil Court, Bangalore. Now according to the learned counsel for the respondent, the suit has been dismissed. Be that as it may.

7. The main defence of the petitioner is that he has discharged huge amount and to establish the discharge, he has bank accounts and account statement. In such view of the matter, considering the legal presumptions attached to the cheque cases under Section 138 of the Negotiable Instruments Act, under section 139 of the Negotiable Instruments, the onus always lie on the accused to dislodge legal presumption. It is also well settled that to discharge such legal presumption, the Court need not always search for direct evidence, even probabilities is sufficient to dislodge the presumption. When the specific case of the accused is that he has discharged the amount, this Court is of the view that mere delay cannot be ground to deny his evidence to establish his stand, when the documents are sought to be introduced are the bank statements and passbook.

8. In such view of the matter, this Court is inclined to set aside the order passed in Crl.M.P.No.6217 of 2016 in C.C.No.10730 of 2007 dated 16.06.2017 and allow the petition under Section 311 of Cr.P.C. in Crl.O.P.No.11706 of 2017. DW.1 shall examine herself before the trial Court on 19.01.2022 and the respondent shall cross-examine the witnesses within three (3) days from the date of his chief examination. It is also



made clear that if the D.W.1 has not appeared before the Court on 19.01.2022 and produce the documents on their side, the petitioners will lose their right of filing any other petition or to introduce any document. After completion of trial, the learned Metropolitan Magistrate should dispose of the entire matter within a period of two (2) months.

9. With the above directions, the Criminal Original Petition in CrI.O.P.No.11706 of 2017 is allowed. Consequently, connected miscellaneous petition is closed.

10. Accordingly, the CrI.O.P.No.14355 of 2017 is dismissed as not pressed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vrc / kbs

To

The Metropolitan Magistrate,
Fast Track Court IV,
George Town, Chennai.

+2ccs to Mr.G.Ravi Kumar, Advocate, S.R.No.66913 (24/01/2022)

+1cc to Mr.T.C.Sajith Babu, Advocate, S.R.No.67733 (24/01/2022)

CrI.O.P.Nos.11706 & 14355 of 2017 &
CrI.M.P.No.7663 of 2017

SSN(CO)

CT 07/01/2022