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Crl.O.P.No.11462 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.11462 of 2021 and
Crl.M.P.No.6659 of 2021

P.Paramasivam ... Petitioner
/vs/
P.V.Nachimuthu ... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order dated 28.11.2019 made in C.M.P.No.2923 of 2019 in STC No.1044 of 2017 on the file of the learned Judicial Magistrate No.1, Sankari.

For Petitioner ... Mr.N.Manoharan
For Respondent ... Mr.R.Marudhachalamurthy

ORDER

This Criminal Original Petition has been filed to set aside the order dated 28.11.2019 made in C.M.P.No.2923 of 2019 in STC No.1044 of 2017 on the file of the learned Judicial Magistrate No.1, Sankari.



CrI.O.P.No.11462 of 2021

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. The petitioner is the accused in the private complaint filed by the respondent for the offence under Section 138 of Negotiable Instruments Act and it was taken on file in STC No.1044 of 2017. During the pendency of the proceedings, the petitioner has filed C.M.P.No.2923 of 2019 to issue summons to some of the witnesses and direct them to produce the documents. In the said petition, the petitioner wanted that summons should be sent to the Managing Partner of Meena Finance Company and the Branch Manager of ICICI Bank Limited, Sankari Branch to produce the following documents:

"1.The Managing Partner of Meenakshi Finance, having office at SSS Complex, Opposite to New Bus Stand, Salem Main Road, Sankari Taluk, Salem District - 637 301 to cause production of the following documents and give evidence;

Particulars:

Account opening details for the loan No.P.L A/C No.2 and other relevant Documents.



Crl.O.P.No.11462 of 2021

Account statement for the loan No.P.L A/C No.2

Account book for the loan No.P.L A/C.No.2

Receipt Book for receipt No.975 dated 20.11.2015.

2. The Branch Manager, ICICI Bank Limited, Sankari Branch to cause production of the following document and give evidence.

Particulars:

Account opening form for the account No.088601000228

Name P.Paramasivam

Cheque issuing register for the cheque No.005521

Account statement from 01.10.2008 to 31.12.2008 Account No.088601000228."

However, the learned Judicial Magistrate No.1, Sankari, has only partly allowed the petition. Aggrieved over the same, this Criminal Original Petition is filed.

4. The learned counsel for the petitioner submitted that the specific defence of the petitioner is that unfilled cheques were issued as security for the loan availed by him in one Meenakshi Finance Company; as a partner of the said Company, the respondent has misused the cheques; since the respondent / defacto complainant has stated in the cross examination also



CrI.O.P.No.11462 of 2021

that he was a partner in the said Meenakshi Finance Company, the petitioner has got the duty to rebut the initial presumption that has accrued to the respondent under Section 138 of Negotiable Instruments Act; despite the petitioner has got a reverse burden and only for that purpose he wanted the first witness to be examined by producing the documents therein, the learned Judicial Magistrate has chosen to dismiss the same as against the witness No.1; hence in the interest of justice, the order passed by the learned Judicial Magistrate has to be modified by allowing this Petition in entirety.

5. The learned counsel for the respondent submitted that it is true that he was a partner in Meenakshi Finance Company and even in his counter, he has stated that the loan availed by the petitioner from the said Finance Company has been repaid and the said account has been closed on 31.12.2016 and there is no necessity to produce any documents in this regard. However during the course of the arguments, it is also submitted by the learned counsel for the respondent that since the account was closed, the Finance Company has destroyed the documents and it is not possible to



produce the documents pertaining to the said loan before the Court.

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6. Even though in the counter of the respondent, it is stated that the petitioner had availed a loan from Meenakshi Finance Company in which the respondent is also a partner. During the course of the cross-examination, it was stated by the respondent that he did not have any idea about the loan availed by the petitioner from the said Finance Company.

7. It is reasonable on the part of the petitioner to seek production of the loan document pertaining to the loan availed by the petitioner from the Meenakshi Finance Company. However, if those documents could not be produced as submitted by the learned counsel for the respondent that they have already been destroyed, there is no point in issuing summons to the witness No.1 to produce the documents. If the petitioner can convince the Court that being the Finance Company, it would have the documents in its custody, but wantonly the respondent has made a statement that those documents were not available with him. Then he can request the Court to draw adverse presumption against the respondent.



Crl.O.P.No.11462 of 2021

WEB COPY

8. In view of the above stated reasons, I feel no reasonable purpose will be served in modifying the order so as to issue summons to the first witness to produce those documents which he now claims is not available with the respondent. It is to be noted that he did not deny the fact that those documents pertaining to the loan availed by the petitioner and they were under his custody.

9. The learned counsel for the petitioner submitted that the respondent has not taken the present stand that the loan documents were not available with him and he has come out with such statement only before this Court.

10. However, the respondent's submission on the above aspect is recorded.

11. With the above observations, this Criminal Original Petition is disposed and the order passed in C.M.P.No.2923 of 2019 in STC No.1044



Crl.O.P.No.11462 of 2021

of 2017 dated 28.11.2019 on the file of the learned Judicial Magistrate No.1, Sankari. is confirmed. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
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07.12.2022

To

- 1.The Judicial Magistrate No.1,
Sankari.
- 2.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.11462 of 2021

R.N.MANJULA ,J.

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