



CrI.OP.No.27301 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CrI.OP.No.27301 of 2022

and

CrI.MP.Nos.16790 & 16791 of 2022

1.M/s.Thirupathi Brothers Film Media Pvt.Ltd.,
Rep. by its Managing Director & Authorised Signatory
N.Lingusamy.

2.Mr.N.Lingusamy
Authorised Signatory & Managing Director,
M/s.Thirupathi Brothers Film Media Pvt.Ltd.,

3.N.Subash Chandra Bose
Authorised Signatory & Managing Director,
M/s.Thirupathi Brothers Film Media Pvt. Ltd. ...

Petitioners

/vs/

M/s. Paceman Finance Indian Pvt. Ltd,
Rep. by Mr.Dharmesh Kumar. ... respondent / complainant

Prayer : Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the order dated 19.09.2022 made in CrI.MP.No.1444/2020 in CC.No.4730/2018 on the file of the learned I Fast Track Magistrate, Allikulam, Chennai.

For Petitioners ... Mr.M.Murali



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ORDER

This Criminal Original Petition has been filed challenging the order of the learned I Fast Track Magistrate, Allikulam, Chennai, dated 19.09.2022 made in CrI.MP.No.1444/2020 in CC.No.4730/2018.

2.The petitioner is the accused against whom the respondent /complainant has given a private complaint for the offence under section 138 of the Negotiable Instruments Act. During the stage of 313 Cr.P.C. Proceedings, the petitioner has filed a petition under Section 91 Cr.P.C to call for the following documents:

- a) *Statement of Accounts for financial year 2016-2017 (01.04.2016 to 31.03.2017)*
- b) *Cash book for financial year 2016-2017 (01.04.2016 to 31.03.2017)*
- c) *Copy of all vouchers and receipts related to the entries in the statement of accounts for the period 01.04.2016 to 30.04.2016.*
- d) *Form MBP 2 Register for financial year 2016-2017 ((01.04.2016 to 31.03.2017)*
- e) *Profit and Loss account for the financial year 2016-2017.*
- f) *Balance Sheet for the Financial Year 2016-2017.*
- g) *Copy of Minutes book authorizing the agent to file and conduct the case against the defaulters held at Company Board Meeting on 12.05.2017.*
- h) *Annual returns filed before the Registrar of companies along with the Auditor Reports for*



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financial year 2016-2017 ((01.04.2016 to 31.03.2017)

- i) Form NO.MGT;7 (Annual Return) filed before the Registrar of Companies for financial year 2017-2018 ((01.04.2016 to 31.03.2017)*
- j) Copy of Non-banking Financial Corporation (BBFC) licence issued the Reserve bank of India to the Complainant Company.”*

3. The learned counsel for the petitioner submitted that the production of these documents are very well essential to establish the defence taken up by the petitioner; but the learned trial Judge without considering the merits of the petition, dismissed the same.

4. The allegation of the respondent in the complaint is that the impugned cheque has been given by the 1st petitioner's company in connection with the loan of Rs.35,00,000/- borrowed on various dates between the period 05.04.2016 and 20.04.2016. It is needless to state that for the offence under Section 138 NI Act, if the execution of the cheque is not in dispute, the complainant is entitled to an initial presumption in his favour. However, the complainant has to prove the probabilities of his case in order to convert the initial presumption as conclusive proof.



5. The petitioner had a defense by stating that he did not have any transaction with the respondent and hence the whole allegations made in the complaint are false.

6. Even though the petitioner had alleged that the whole transaction had taken place between the period 05.04.2016 and 20.04.2016, the petitioner wanted to produce the statement of accounts for the financial year 2016 -2017, cash book for the year 2016-2017 and all other documents, which are totally unnecessary for the simple issue that has to be decided in the case.

7. The learned trial Judge had observed in his order that the petitioner had filed the petition just to drag the proceedings. The petitioner had chosen to file this petition at the time when the matter was posted for 313 questioning. So it is an afterthought action. The voluminous documents have been called for at the fag end of the trial would justify the above observation of the learned trial Judge.

8. It is to be noted that during the cross examination of PW.1 the petitioner did not mention about the documents and posed any questions in this regard. The Magistrate while conducting the trial for an offence under Section 138 of the Negotiable Instruments Act-1881, cannot be expected to conduct the trial similar



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to a Civil Suit for recovery of money. The limited point for consideration before the learned Magistrate is to decide whether the cheque was given for a legally enforceable debt or liability and whether the cheque was dishonored due to want of sufficient funds. For this limited point. Hence, it is unnecessary to toil the Court with voluminous record which have been listed by the petitioner in the petition. The learned Magistrate had rightly dismissed the petition and it does not require any interference.

According this Criminal Original Petition stands **dismissed**.

Consequently, connected miscellaneous petitions are closed.

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jrs

Internet: Yes/No

Index: Yes /No

Speaking /Non Speaking



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R.N.MANJULA, J.

jrs

To

- 1.The Inspector of Police,
Thiruvottiyur Police Station,
Washermanpet, Chennai.
- 2.The Public Prosecutor,
High Court, Madras.

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