



Crl.O.P.No.24632 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24632 of 2023

and

Crl.M.P.No.17119 of 2023

S.V.Ramamurthy

... Petitioner

Vs.

Paneerselvam (Died)

1.Seethalakshmi

2.Arunadevi

3.Arunkumar

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order, dated 05.09.2023 passed by the learned Fast Track Judicial Magistrate, Thiruthuraipoondi, Thiruvavarur District in Crl.MP.No.2495 of 2023 in S.T.C.No.63 of 2019.

For Petitioner : Mr.Swami Subramanian

ORDER

Being aggrieved by the dismissal of the petition filed under Section 91 Cr.P.C., the present Criminal Original Petition is filed.



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2. The brief facts of the case is that one Paneerselvam has filed a private complaint against the petitioner herein for dishonouring the cheque issued in his favour for Rs.10,00,000/-. One of the defence taken by the petitioner is that the complainant had no wherewithal to lend loan of Rs.10 lakhs. Therefore, certain questions need to put on him. When the complainant was examined as witness on 19.03.2021, the complainant has admitted that he has three bank accounts where he has savings and was ready to produce the statement of accounts. However, there was no attempt on the part of the petitioner herein for production of the documents till the closing of examination of prosecution side witnesses and the matter was posted for 313 Cr.P.C., questioning. Meanwhile, the defacto complainant passed away on 24.05.2022 and his legal heirs were brought on record in the place as complainant. When the petition filed under Section 91 Cr.P.C., on 15.09.2023, the same was opposed by the petitioner stating that after the death of the complainant, the statement of accounts now been called by way of petition filed under Section 91 Cr.P.C., is an attempt to delay the process.



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3. The trial Court on considering the petition has observed that since the petition to produce the documents of the complainant Paneerselvam was not filed before the demise of Paneerselvam. His legal heirs may not be in a position to say anything about the content of the documents namely the statement of accounts and therefore, dismissed the petition filed under Section 91 Cr.P.C.

4. The learned counsel appearing for the petitioner submitted that it is a valuable defence for the accused to prove that the complainant had no source to lend Rs.10,00,000/-. Therefore, the bank statements which the complainant has admitted in his cross examination need to be produced.

5. On perusal of the cross examination of PW.1, Paneerselvam, the complainant has admitted that if his bank statements are perused, his capacity to lend Rs.10 lakhs can be proved. He has admitted that he has ready to produce the statement of account of three bank accounts maintained in Indian Overseas Bank, Indian Bank and State Bank of India at Muthupettai branch. Since the complainant had admitted about the fact that



his financial capacity can be seen from his bank account, his legal heirs need not know or say anything about the entries found in the bank accounts for the Court to peruse the account and come to the conclusion that whether the statement made by the complainant on oath is substantiated from the entries in the bank account. This process will not take much time, mere summons to the respective bank managers for production of bank account maintained during the year 2019 will be sufficient and hence, this Court is of the view that the petition is to be allowed.

6. Accordingly, the order passed by the trial Court in Crl.M.P.No.2495 of 2023 in S.T.C.No.63 of 2019 is set aside and the trial Court is directed to cause summons to the respective Bank Managers on application by the petitioner herein mentioning the account number of the complainant and the bank name. On such summons, the matter may be considered and fresh application from the petitioner under Section 91 Cr.P.C., shall be done within a period of 15 days from today.



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7. With the above directions, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

31.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

1.The Fast Track Judicial Magistrate, Thiruthuraipoondi,
Thiruvarur District.



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Dr.G.JAYACHANDRAN,J.

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