



Crl.O.P.No.25247 25254, 25255 and 25257 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.Nos.25247, 25254, 25255 and 25257 of 2024 and
Crl.M.P.Nos.14083, 14085, 14086 and 14088 of 2024 of 2024

In All CrI.O.Ps.

M.A.Manickam (Deceased)

1. V.D.Sivagami
2. M.Sheela
3. M.Malathi
4. M.Rajkumar

... Petitioners

Vs.

T.Karthikesan

... Respondent

Common Prayer: Criminal Original Petitions filed under Section 528 of B.N.S.S. to call for the records culminating in the impugned orders dated 29.08.2024 passed in CrI.M.P.No.4422 of 2023 in C.A.No.231 of 2019, CrI.M.P.No.4419 of 2023 in C.A.No.228 of 2019, CrI.M.P.No.4421 of 2023 in C.A.No.230 of 2019 and CrI.M.P.No.4420 of 2023 in C.A.No.229 of 2019, by the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai, examine the correctness, legality and propriety of the findings made therein, and set aside the same.



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In all Crl.O.Ps.

For Petitioners : Mr.J.Surya Prakash
For Respondent : Mr.S.Sathish Rajan

COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners against the impugned orders dated 29.08.2024 passed in Crl.M.P.No.4422 of 2023 in C.A.No.231 of 2019, Crl.M.P.No.4419 of 2023 in C.A.No.228 of 2019, Crl.M.P.No.4421 of 2023 in C.A.No.230 of 2019 and Crl.M.P.No.4420 of 2023 in C.A.No.229 of 2019, by the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai, and to examine the correctness, legality and propriety of the findings made therein, and set aside the same.

2. The crux of the case is that, originally, the husband of the 1st petitioner/father of the petitioners 2 to 4 had filed private complaints against the respondent under Section 138 of Negotiable Instruments Act in C.C.No.298



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of 2010, C.C.No.10183 of 2009, C.C.No.12119 of 2009 and C.C.No.12118 of

2009, on the file of the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai. The learned Magistrate, after completion of trial, disposed all the cases on merits by order dated 20.05.2019 and convicted the respondent/accused. Challenging the same, the respondent/accused filed appeals before the XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai, in C.A.No.231 of 2019, C.A.No.228 of 2019, C.A.No.230 of 2019 and C.A.No.229 of 2019, and pending appeals, he filed petitions in Crl.M.P.No.4422 of 2023, Crl.M.P.No.4419 of 2023, Crl.M.P.No.4421 of 2023 and Crl.M.P.No.4420 of 2023 respectively, under Section 91 Cr.P.C. for production of certain documents mentioned therein. The said petitions came to be allowed by the appellate Court by common order dated 29.08.2024. Challenging the same, the legal heirs of the deceased complainant, have filed the present petitions before this Court.



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3. The learned counsel for the petitioners submitted that except in one document, the respondent/accused is a party to all other documents sought to be produced before the Court and therefore, he cannot invoke Section 91 Cr.P.C. He further submitted that against the order of conviction, the respondent/accused has preferred appeals and to decide the offence under 138 of Negotiable Instruments Act, the documents sought for by the respondent/accused are not necessary. The respondent/accused has to only prove that the cheques were not issued for discharge of legally enforceable debts. He would submit that only in order to protract the appeals, the respondent/accused filed those petitions and the appellate Court failed to consider the scope of Section 91 of Cr.P.C. and also failed to consider as to whether the said documents would be helpful to decide the appeals and allowed the petitions. Since the impugned orders are interlocutory orders, no revision would lie and therefore, the petitioners have invoked Section 528 of B.N.S.S.

4. Heard both sides and perused the materials available on record.



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5. According to the petitioners/complainants, the respondent/accused is

already a party to the documents sought for production and therefore, he cannot invoke Section 91 of Cr.P.C. However, it is not the case of the petitioners that the respondent/accused was already having the copies of those documents. Neither there is an admission by the respondent nor averments by the petitioners that the respondent/accused was already having the copies of those documents. Admittedly, once the trial Court convicted an accused, then the accused would lose his presumption. However, when the accused files an appeal, it is the duty of the accused to prove his case and his innocence. In this case, the trial Court convicted the respondent/accused against which, the respondent/accused has filed appeals and now the burden lies upon the respondent/accused. Therefore, he has filed those petitions invoking Section 91 Cr.P.C. for production of certain documents as additional evidence. The appellate Court as a fact finding Court, has got every power to receive additional evidence while deciding the case.



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To

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The XX Additional District and Sessions Judge,
City Civil Court, Allikulam, Chennai,



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P.VELMURUGAN. J.

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