IN THE HIGH COURT OF JUDICATURE AT MADRAS

Crl.O.P.Nos.25391 of 2023 etc batch Order Reserved on:	16.04.2024
Crl.O.P.Nos.9597 of 2024 etc batch Order Reserved on:	23.04.2024
Order Pronounced on:	25.04.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.25391, 25478, 25706, 25474, 25480, 25485, 25548, 25663, 25665, 25487, 25489, 25701, 25703,25708, 25718, 25720, 25729, 25393, 25396, 25398, 25400, 25401, 25407, 25408, 25409, 25410, 25412, 25413, 25414, 25415, 25416, 25417, 25418, 25428, 25430, 25432, 25435, 25467, 25471 & 25730 of 2023

and

Crl.M.P.Nos.17661, 17603 to 17610,17612 to 17615, 17617 to 17620, 17621, 17623, 17627, 17629, 17642, 17643, 17648,17650, 17652, 17654, 17663,17725, 17726, 17808, 17810, 17831, 17834, 17837, 17839, 17842, 17844, 17851, 17852 & 17622 of 2023

Crl.O.P.Nos.9597, 9584, 9588, 9594, 9600, 9602, 9648, 9651, 9656, 9662, 9665, 9669, 9671, 9673, 9674,9680,9683, 9687, 9689 & 9692 of 2024

and

Crl.M.P.Nos.6652, 6656, 6660,6663, 6666, 6670, 6701, 6702, 6703, 6706, 6708, 6713, 6717, 6718, 6719, 6722, 6726, 6731, 6734 and 6735 of 2024

Crl.O.P.No.25391 of 2023 etc., batch

Mr.R.Munirathinam,(38 years),
Correspondent,
Green Park International School,
Salem Main Road, Kadathur Post,
Pappireddipatti Taluk, Dharmapuri District. ... Petitioner in Crl.O.P.No.25391/2023

/versus/

Mrs.Rajam .. Respondent in Crl.O.P.No.25391/2023

Crl.O.P.No.25391 of 2023: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the order dated 27.09.2023 in Crl.M.P.No.20621 of 2023 in C.C.No.9166 of 2019 from the file of the Fast Track Court-II(Metropolitan Magistrate), Egmore (Allikulam) at Chennai, set aside the same.

For Petitioner :Mr.D.Shivakumaran for M/s Mayilnathan in **Crl.O.P.No.25391 of 2023**

For Respondent :Mr.G.Hari Hara Arun Soma Sankar **Crl.O.P.No.25391 of 2023**

COMMON ORDER

These three batches of Criminal Original Petitions filed under Section 482 of Cr.P.C, arise from the orders passed by the Trial Court dismissing petitions filed by the accused under Section 91 Cr.P.C, Section 311 Cr.P.C and Section 254(2) Cr.P.C respectively.

2. Twenty private complaints under Section 138 of Negotiable Instruments Act, 1881 against the petitioner/Munirathinam either in his individual capacity or/and as Managing Partner of M/s Everest Blue Metals have been taken cognizance by the Fast Track Court-II, Metropolitan Magistrate Court at Egmore. The complainants are either Mr.M.Gajendran [8 cheques totally for Rs.9,05,00,000/-, (Rupees Nine Crores and Five Lakhs only)] or his family members, such as, his wife Mrs.G.Rajam [2 cheques totally for Rs.5,57,00,000/- (Rupees Five Crores and Fifty Seven Lakhs only)] and 3 sons Mr.G.Ramachandran [5 cheques totally for Rs.7,12,00,000/- (Rupees Seven Crores and Twelve Lakhs only)], Mr.G.Vasanthakumar [3 cheques totally for Rs.3,95,00,000/- (Rupees Three Crores and Ninty five Lakhs only)] and Mr.M.G.Sureshkumar [2 cheques totally for Rs.4,35,00,000/- (Rupees Four Crores and Thirty Five Lakhs only)]. The sum total of 20 cheques is Rs.30,04,00,000/- (Rupees Thirty Crores and Four Lakhs only).

3. For easy reference, the details of the calender case number, name of the complainant, name of the accused and the cheque amount is tabulated below:-

Sl. No.	C.C. Nos.	Petitioner/ Accused	Complainant	Cheque No. and date	Cheque amount Rs.

1	9167/19	Everest Blue Metals R.Munirathinam	M.Gajedran	476823, Canara Bank, Bommidi dated 09.09.2019	7,75,00,000
2	9233/19	R.Munirathinam	M.Gajedran	572724, Indian Bank, Kadathur Branch, dated 13.08.2019	58,00,000
3	616/20	R.Munirathinam	M.Gajedran	572725, Indian Bank, Kadathur Branch, dated 03.10.2019	15,00,000
4	623/20	Everest Blue Metals M.Raja	M.Gajedran	476827,Canara Bank, Bommidi dated 03.10.2019	10,00,000
5	624/20	Everest Blue Metals M.Raja	M.Gajedran	476826,Canara Bank, Bommidi dated 03.10.2019	10,00,000
6	625/20	Everest Blue Metals M.Raja	M.Gajedran	476824,Canara Bank, Bommidi dated 03.10.2019	10,00,000
7	626/20	Everest Blue Metals R.Munirathinam M.Raja	M.Gajedran	476825,Canara Bank, Bommidi dated 03.10.2019	15,00,000
8	627/20	R.Munirathinam	M.Gajedran	938773, Indian bank, Kadathur Branch dated 03.10.2019	12,00,000
9	9166/19	R.Munirathinam	G.Rajam	698499, Indian Bank Sillarahalli Branch, dated 09.09.2019	5,50,00,000
10	572/20	R.Munirathinam	G.Rajam	938776, State Bank of India, Kadathur Branch, dated 03.10.2019	7,00,000
11	9240/19	R.Munirathinam	G.Ramachandran	009615, Canara Bank, Bommidi, dated 09.09.2019	6,75,00,000
12	619/20	R.Munirathinam	G.Ramachandran	698498, Indian	10,00,000

				Bank, Sillarahalli Branch, dated 03.10.2019	
13	620/20	R.Munirathinam	G.Ramachandran	698500, Indian Bank, Sillarahalli Branch, dated 03.10.2019	10,00,000
14	621/20	R.Munirathinam	G.Ramachandran	009618, Canara Bank, Bommidi, dated 03.10.2019	10,00,000
15	622/20	R.Munirathinam	G.Ramachandran	938772, State Bank of India, Kadathur Branch, dated 03.10.2019	7,00,000
16	9234/19	R.Munirathinam	M.G.Vasantha Kumar	698502, Indian Bank, Sillarahalli Branch, dated 09.09.2019	3,80,00,000
17	617/20	R.Munirathinam	M.G.Vasantha Kumar	938774, State Bank of India, Kadathur Branch, dated 03.10.2019	5,00,000
18	618/20	R.Munirathinam	M.G.Vasantha Kumar	009619, Canara Bank, Bommidi dated 03.10.2019	10,00,000
19	9241/19	R.Munirathinam	M.G.Suresh Kumar	572727, Indian Bank, Kadathur Branch, dated 09.09.2019	4,30,00,000
20	628/20	R.Munirathinam	M.G.Suresh Kumar	938775, State Bank of India, Kadathur Branch, dated 03.10.2019	5,00,000

4. The averment in the complaints are almost similar or identical. The

tenor of the complaint is that the accused R.Munirathinam borrowed loan on different dates between August 2018 and June 2019 to meet out his business commitments. To discharge the loan, he gave the subject cheques. On presentation for collection, the same got returned with endorsement either as “funds were insufficient” or “ payment stopped”. After issuing statutory notice calling upon the accused to pay the cheque amount, the complaints have been filed.

5. During the course of trial, through additional proof affidavit, reply given by the accused for the statutory notice and a deed of settlement admitting the liability purported to have been executed by the accused/petitioner on 07/09/2019 were filed and marked as Exhibits.

6. In the reply, while the accused admits his signatures in the cheques, restricts his liability only to a tune of Rs.5,90,00,000/-. He had denied the issuance of cheques for discharge the loan as claimed in the complaints. According to the accused, Gajendiran and his family members are doing finance business. From them, he borrowed Rupees Five Crores and Ninety Lakhs through bank transactions. While borrowing the loan, he gave 20

signed cheques in blank, 13 promissory notes, 22 title deeds in original and 40 signed stamp papers to the complainant-Gajendiran as security. The cheques given as security have been misused and filled up for higher amount, more than the liability as if the accused drawn the cheques in favour of Gajendiran and his family members to discharge the existing liability.

7. Contending that the complaints are silent about the date of advancing the loan and mode of the payment. The source to advance such a huge amount is not disclosed in the complaints The complainants in their respective complaints have mounted the witness box and deposed. In the cross examination, they admit that they are all income tax assesses and they paid part of the loan amount through bank transaction. On completion of examination of complainant's side evidence and questioning the accused under Section 313 of Cr.P.C., the petitioner/accused has filed a set of petitions under Section 311 Cr.P.C in all the twenty complaints to recall the complainants stating that certain important questions to discredit the witness omitted to be put, hence, they must be recalled.

8. The petitioner/accused in all the twenty complaints has also taken out applications under Section 91 Cr.P.C for production of the complainants

Income Tax Returns for the period from 2018 to 2021 and their Bank statement of Accounts, since the complainants have admitted during the cross examination that they have those documents with them.

9. In both the batch of petitions, the complainants filed counter stating that, they were cross examined extensively by the learned counsel appearing for the accused. The petitions to recall are filed at the fag end of the trial to harass them without assigning any reason for recalling. For the petitions filed under Section 91 Cr.P.C, the complainants in their counter had contended that, the accused admits partial liability (Rupees Five Crores and Ninety Lakhs only). Therefore, cannot seek for the complainants source of advancing the loan. Further, due to default of the accused, they were not able to file the income tax returns and unable to file their bank statements.

10. The trial Court dismissed the petitions filed under Section 311 Cr.P.C stating that, in the petition to recall PW-1 no specific reason stated why the witness need to be recalled. The accused can establish his defence through his witnesses and documents. Recalling the complainant is not necessary. The Trail Court dismissed the petitions filed under Section 91 Cr.P.C. stating that, the

accused admits his signature in the cheques and also admits the receipt of Rs.5,90,00,000/- through bank transaction. Hence, he can prove these through his bank statement and need not compel the complainants to produce their bank statement and income tax returns.

11. The orders of the Trial Court dismissing the petitions filed under Section 311 Cr.P.C and Section 91 of Cr.P.C are under challenge on the ground that the accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881, has to rebut the statutory presumption. When the reverse burden is on the accused and the complaint having failed to prove the foundational facts like date of lending the loan, the terms of loan agreement and mode of payment, the accused has to establish his innocence through cross examining the complainant and discredit his testimony. This right is in addition to the right to adduce oral and documentary evidence to prove that the complainant's family members had no wherewithal to lend thirty crore rupees as interest free loan. The accused cannot be deprived of his right to prove the contrary and discharge the reverse burden.

12. The Learned Counsel for the petitioner/accused submitted that, recall of PW-1/complainant will not prejudice nor cause harassment to the

complainant. Contrarily, if the witness is not recalled, the accused will be badly prejudiced. His valuable right of defence will be affected. The line of defence cannot be disclosed in the recall petition. The refusal of the complainant to produce their income tax returns and bank account statements contrary to their admission in the chief examination has to be drawn adverse inference against the complainant. The further cross of the complainant in this regard will elucidate that the complaint if bereft of fundamental details and lack of proof for payment. Acceptance of partial liability cannot be a reason to dismiss the petitions to recall the complainant and for the dismissal of the petitions to produce income tax returns and bank statements.

13. Per contra, the learned counsel for the respondent/complainant submitted that after the case posted for arguments, these petitions were filed to recall the witnesses, to produce documents and to summon bank witnesses. The intention of the accused is to drag the proceedings and to delay the inevitable. The complainants through oral and documentary evidence have proved the foundational facts and been extensively cross examined. No reason have been stated for what the witness to be recalled. Regarding the income tax returns and bank statements of the complainants, the Trial Court has rightly observed that,

the facts sought to be proved can be done through examining the accused side evidence and it is not necessary to summon the complainant to produce documents.

14. Heard both sides. Records perused.

15. The complaints 20 in numbers against the petitioners are in respect cheques issued for a total sum of Rs.30,04,00,000/-. The complainants are all members of one family. They all admit in the cross examination that they are all income tax assesses for several years. They also claim that money was lend either by cash or through bank transaction. The complaints does not disclose when and how much paid through bank transfer and when and how much paid by cash. Mere admission that the accused borrowed Rs.5,90,00,000/- may not be sufficient to sustain a cheque dishonour complaint for Rs.30 crores. It is relevant to note that the accused had sent a detailed reply to the statutory notice narrating, how the liability arose, how much money received and the mode of payment. The complainant had first conveniently omitted to disclose the receipt of the reply notice. Later, during the trial, included reply notice and a deed of settlement dated 07/09/2019 as additional documents on the side of the

complainant and introduced it through additional proof affidavit.

16. No doubt, the complainants had been cross examined extensively on several aspects, but the accused wants to cross examine PW-1 further. As per the Procedure Code, in a private complaint tried by a Magistrate on complaint otherwise than on police report, the complainant is expected to appear physically in the Court on every hearing days. Therefore, recalling the complainant/PW-1 cannot be termed as an harassment as claimed by the complainant's counsel. Further, depriving the accused facing prosecution for issuing cheques worth more than Rs.30 crores, his right to cross examine adequately will be against fair trial. More so, when the complainant is not ready to produce his income tax returns and bank statement, after admitting in the cross examination that they are in possession of the income tax returns and bank statements.

17. It is also relevant to note that, after dismissal of these two sets of petitions, one to recall PW-1 and another to produce documents, the petitioner/accused had filed another set of petitions under Section 254(2) Cr.P.C to summon Managers of his Banks, where he maintains his accounts, to prove, how much money really transferred from the complainants into his

account. The trail Court had dismissed these petitions also on 03/02/2024 on the ground that these facts can be established by the accused by examining himself as defence witness. The trial Court has opined that, summoning the Bank Managers to give evidence is not necessary, when there is nothing to indicate that the Bank Managers refused to given the bank statements of the accused. The dismissal of the petitions filed under Section 254(2) Cr.P.C is also under challenge in the third set of Criminal Original Petitions.

18. This Court is of the view that, when the complaint lack details about the manner in which the liability arose to issue the subject cheques and when the complainants admit that they are income tax assesses and they maintain bank accounts through which portion of the loan amount was transferred, then for proper appreciation of the facts can be done, only if the witnesses are recalled and confronted why they contradict their earlier admission and why they refuse to produce the documents as sought for by the accused. Expecting the accused to rebut the presumption, withhold the documents necessary for the proof of foundational facts will be unfair. Hence, the impugned order dismissing petitions filed under Section 311 Cr.P.C and Section 91 of Cr.P.C, dated 27/09/2023 is set aside.

19. **In the result,** Crl.O.P.Nos.25391, 25478, 25706, 25474, 25480, 25485, 25548, 25663, 25665, 25487, 25489, 25701, 25703, 25708, 25718, 25720, 25729, 25393, 25396, 25398, 25400, 25401, 25407, 25408, 25409, 25410, 25412, 25413, 25414, 25415, 25416, 25417, 25418, 25428, 25430, 25432, 25435, 25467, 25471 & 25730 of 2023 are allowed. Consequently, connected Miscellaneous Petitions are closed.

20. In so far as the petitions filed against the dismissal of the petitions filed under Section 254(2) of Cr.P.C. vide order dated 03/02/2024, this Court find that the trial Court has not denied the right of the accused relying upon his bank statements by marking it through his witness after obtaining the bank statements from his bank. Summoning the bank Managers for the said purpose is not necessary. The reasoning given by the trial Court is in tune with the law and precedents. Further, Section 254(2) of Cr.P.C can be invoked by the Magistrate *suo moto* or on petition at any stage of the trial. The dismissal of the petitions filed under Section 254(2) Cr.P.C will not be a bar for the Court to exercise its *suo moto* power at the later stage of the trial, if necessary. Based on the facts elucidated during the further cross of PW-1 and the production/non

production of documents sought, the trial Court can take a decision whether the Bank Mangers of the accused Bank need to summoned.

21. Therefore, this Court confirms the order of the trial Court dismissing the petitions filed under Section 254(2) of Cr.PC and dismiss the petitions filed challenging the said order.

22. **In the result**, Crl.O.P.Nos.9597, 9584, 9588, 9594, 9600, 9602, 9648, 9651, 9656, 9662, 9665, 9669, 9671, 9673, 9674, 9680, 9683, 9687, 9689 & 9692 of 2024 are dismissed. Consequently, connected Miscellaneous Petitions are closed.

25.04.2024

Index:yes/no
Neutral Citation:yes/no
ari

To:

The Fast Track Court-II (Metropolitan Magistrate), Egmore (Allikulam) at Chennai,

DR.G.JAYACHANDRAN,J.

ari

Pre-delivery Common Order made in
Crl.O.P.Nos.25391, 25478, 25706, 25474,
25480, 25485, 25548, 25663, 25665,
25487, 25489, 25701, 25703,25708,
25718, 25720, 25729, 25393, 25396,
25398, 25400, 25401, 25407, 25408,
25409, 25410, 25412, 25413, 25414,
25415,25416, 25417, 25418, 25428,
25430, 25432, 25435, 25467, 25471
& 25730 of 2023
and
Crl.M.P.Nos.17661, 17603 to 17610,17612 to
17615,17617 to 17620, 17621, 17623, 17627,
17629, 17642, 17643, 17648,17650, 17652, 17654,
17663,17725, 17726, 17808, 17810, 17831,
17834, 17837, 17839, 17842, 17844, 17851,
17852 & 17622 of 2023 and
Crl.O.P.Nos.9597, 9584, 9588, 9594, 9600,
9602, 9648, 9651, 9656, 9662, 9665, 9669,
9671, 9673, 9674,9680,9683, 9687, 9689 &
9692 of 2024 and
Crl.M.P.Nos.6652, 6656, 6660,6663, 6666,
6670, 6701, 6702, 6703, 6706, 6708, 6713,
6717, 6718, 6719, 6722, 6726, 6731, 6734
and 6735 of 2024

25.04.2024