

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.1211 of 2004

and

Crl.M.P.Nos.7879 & 9281 of 2004

R.Meenakshi Sundaram ... Petitioner/Accused

-vs-

T.V.Mylsamy ... Respondent/complainant

This Revision is filed against the order dated 23.2.2004 in C.R.P.No.1 of 2004 passed by the Additional District and Sessions Judge(FTC No.1) Coimbatore, setting aside the order in Crl.M.P.no.9680 of 2003 in C.C.NO.79 of 2002 on the file of the Judicial Magistrate No.2, Coimbatore dated 21.11.2003.

For petitioner : : Mr.P.Uday Shankar
For respondent : : Mr.S.N.Thangaraj

ORDER

This revision has been preferred against the order passed by the learned Additional District and Sessions Judge (Fast Track Court NO.1) Coimbatore in C.R.P.No.1 of 2004 which emanates from an order passed by the learned Judicial Magistrate, No.2, Coimbatore in C.M.P.No.9680 of 2003 in C.C.No.79 of 2002.

2. The application was filed under Section 91 of Cr.P.C. requesting the Court to direct the respondent/complainant to produce 12 documents listed under the said application. The learned trial Judge, after going through the affidavit to the application and also the counter filed by the respondent, has passed an order directing the respondent to produce the documents which are available out of 12 documents listed under the application. Aggrieved by the order of the learned trial Judge, the accused has preferred a revision under C.R.P.No.1 of 2004 before the Additional District and Sessions Judge, (Fast Track Court No.1) Coimbatore.

3. The learned Sessions Judge, after meticulously going through the order passed by the learned trial Judge and also after going through the material records available, has allowed the revision thereby setting aside the order passed in CrI.M.P.No.9680 of 2003 in C.C.No.79 of 2002 on the file of the Judicial Magistrate No.2, Coimbatore which necessitated the complainant in C.C.No.79 of 2002 to prefer this revision.

4. Heard Mr.P.Uday Shankar, learned counsel appearing for the petitioner and Mr.S.N.Thangaraj, learned counsel appearing for the respondent and considered their rival submissions.

5. The learned counsel appearing for the respondent/complainant in C.C.NO.79 of 2002 would contend that only with a view to drag on the proceedings, the revision petitioner herein, who is the accused in C.C.No.79 of 2002, has filed the application under Section 91 of Cr.P.C. and that he has produced all the available documents sought for by the revision petitioner herein under the applications filed by him under Section 91 of Cr.P.C. dated 29.11.2002, 29.1.2003 and 23.9.2003 and under the present application. The learned counsel would further contend that he has preferred a private complaint under Section 200 of Cr.P.C. for an offence under Section 138 of the Negotiable Instruments Act 1881 against the accused and in a petition like this, this Court as well as the Honourable Apex Court have decided that it is a prerogative of the trial Court to decide and to pass necessary orders for summoning and production of a document under Section 91 of Cr.P.C., If the trial Court considers it as relevant and desirable and necessary to decide the issue in that particular case can then order the petition filed under Section 91 Cr.P.C. In support of his contention, the learned counsel appearing for the respondent relied on a decision reported in State of Orissa -vs- Debendra Nath Padhi (2005 Supreme Court Cases(cri) 415) wherein the Honourable Apex Court has held as follows:

"Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the Section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at

the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the Section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the Section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

6. It is pertinent to note that it is not the case of the revision petitioner herein that the complainant has buried the documents, even after the filing of the application under Section 91 of Cr.P.C. As per orders of the learned trial Judge, it is the case of the respondent herein /complainant that the documents which are available out of the documents mentioned in the application under Section 91 of Cr.P.C have already been produced before the trial Court by the complainant. As observed by the Honourable Apex Court in the above said ratio decidendi, the right to ask for the relief under Section 91 of Cr.P.C. arises for the accused only at the stage of defence and not before that. It is clear that under Section 91 of Cr.P.C. if the document is not produced, while it is proved that it is in possession of the complainant then only the applicant under Section 91 of Cr.P.C. can initiate proceedings to compel production thereof. As I have mentioned earlier in this order, absolutely, there is no document

to produce by the accused to show that apart from the documents produced by the complainant, remaining documents mentioned under Section 91 of Cr.P.C. application are also available with the complainant.

7. The learned counsel appearing for the revision petitioner relying on a decision reported in M.S.Narayana Menon @ Mani.v.State of Kerala and another(2006 Cri L.J.4607) would contend that the burden of discharge is on the accused. Now we need not go into the question whether the burden of discharge has been proved or not because the case is only in trial stage.

8. It is relevant to note herein the observation of the learned Judge of this Court in K.Sivanandam-v.State rep.by Inspector of Police, Special Police Establishment Central Bureau of Investigation Anti Corruption Branch, Chennai(2001-2 L.W.(cri) 643) which runs as follows:

"A perusal of the provisions of Section 91 of Cr.P.C. discloses that this section confers power on the court to summon any document, if the Court finds that the summoning of such a document is necessary or desirable in the interests of justice. The word "whenever" with which Section 91 begins, indicates that the Court is empowered to do so whenever the Court finds it necessary or desirable to act upon that provision irrespective of the stage. It is settled law that summoning of document is purely a matter concerned with the discretion of the trial Court. But, the discretion shall be exercised properly and judiciously. In other words, the trial Court must satisfy itself whether the document on which the accused seeks to rely has a bearing upon or is irrelevant to the case. If upon satisfying itself that the document has no bearing, the trial Court is well within its powers to decline the prayer and the same can be deemed that it has exercised its discretion judiciously. It is also held that while exercising this power, the trial Court should not indulge in fishing or roving enquiry."

9. Under such circumstances, I do not find any reason to interfere with the order of the learned Sessions Judge in C.R.P.No.1 of 2004 on the file of the Additional District and Sessions Judge, (Fast Track Court No.1) Coimbatore.

10. In fine, the revision fails and the same is dismissed confirming the order passed by the Additional District and Sessions Judge, (Fast Track Court No.1) Coimbatore in C.R.P.No.1 of 2004 dated 23.2.2004. Consequently, connected Crl.M.P.Nos.7879 & 9281 of 2004 are also dismissed. The learned trial Judge is directed to proceed with the trial in C.C.No.79 of 2002 and dispose of the same within a period of two months from the date of receipt of a copy of this order. (At this juncture the learned counsel appearing for the revision petitioner would submit that at least six months time may be given for disposal but the said request is rejected.)

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The Judicial Magistrate No.2, Coimbatore
2. -do- through the Chief Judicial Magistrate, Coimbatore
3. The Additional District and Sessions Judge, (FTC NO.1) Coimbatore
4. -do- through the Principal Sessions Judge, Coimbatore.

1 cc to Mr.P. Udayashankar, Advocate, Sr. 38785
1 cc to Mr.N. Damodaran, Advocate, Sr. 38562

Crl.R.C.No.1211/2004

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