

**IN THE COURT OF THE JUDICIAL MAGISTRATE,
SULUR, COMBATORE DISTRICT.**

Present: Tmt. G.Rubana, B.Sc., M.L.,

**Judicial Magistrate, Sulur
Friday the 12th day of August 2022
Cr.M.P. No: 4034 of 2019**

in

C.C. No. 89 of 2018

Mr.B.Senthil Kumar,

... Petitioner / Complainant.

-Vs-

Mr.P.Renganathan,

... Respondent / Accused.

This petition has been filed on 05.12.2019 and coming for final hearing today in the presence of Mr. Viswanathan, M.A., B.L., Advocate for the petitioner and Mr.A. Dhandapani, B.A., B.L., Advocate for the respondent and upon perusal of the petition and connected records hearing both side arguments this court passed the following

ORDER

The petitioner herein has filed this petition seeking permission to produce document on his side.

1. The gist of the petition filed by the petitioner / complainant is as follows:

The petitioner submits that he has filed the complaint against the respondent for dishonour of cheque and that since he has received the legal notice after filing this complaint and since the loan agreement mingled with the other bundles and since the power of attorney document executed later, he could not file and they are necessary to substantiate his case and non submission of them are neither wilful nor wanton and beyond their control and prays for order in his favour.

2. The gist of the counter filed by the respondent / accused is as follows: -

The respondent submits that this petition is false, frivolous and unsustainable either in law or on facts and those that are expressly admitted herein all other averments has to be proved by the petitioner and the averments in para 2 to 4 are false and baseless and that the loan agreement mingled with other bundle and the power of

attorney deed executed later are all concocted story and he has no objection to mark the reply notice and the other documents are created for the purpose of this case and further power of attorney is barred by limitation and further power cannot be given to the 3rd party to proceed the case further and the same has been created to fill up the lacuna and this petition is liable to be dismissed.

3) Now the point to be decided is, Whether this petition could be allowed or not?

(i). Heard, and perused the records.

(ii). Brief facts of the case are that the complainant has filed a complaint under Section 138 of NI Act against the accused alleging that the accused had borrowed a sum of Rs.14,50,000/- from the complainant and one Karthikeyan on 08.08.2016 and executed a loan agreement and issued a post dated cheque bearing No:000101 drawn on Karur Vysya Bank, Chinniyapalayam, Coimbatore and that the complainant presented the cheque for encashment on 09.10.2017 and through his banker namely Union Bank of India, Sulur Branch, and the same was returned on 09.10.2017 with an endorsement as "Payment Stopped by Drawer" and hence the complainant issued a legal notice dated 08.11.2017 and the same was received on 09.11.2017 since the accused did not pay the amount within the stipulated period, it constrained the complainant to file the aforesaid complaint.

(iii). The learned counsel for the petitioner has submitted that the documents sought to be produce are necessary for the case of the petitioner. On contra the learned respondent counsel submitted that the petitioner has created forged documents for the purpose of this case and hence prays for dismissal of this petition with cost.

(iv). On perusal of entire records it reveals that the respondent has no objection for filing the legal notice sent by him. Further the dispute is with respect of loan agreement and the power of attorney executed by Kartikeyan infavour of the complainant.

(v) The learned respondent counsel contended that in the 2nd page of the complaint the complainant has stated that the accused has issued the cheque in

dispute in favour of the complainant and hence the loan agreement is not necessary for this case and further contended that the power of attorney deed is executed between the complainant herein and one Karthikeyan after filing of the complaint and the proof affidavit and hence the same is created for the purpose of this case and objected for production of the same.

(vi) On perusal of the complaint in the 1st paragraph the complainant has stated that himself and Karthikeyan has lent loan to the accused and on that date itself the accused has executed a loan agreement and further xerox copy of the loan agreement had been produced along with the complaint itself. In such circumstances production of original during the trial cannot be denied.

(vii) Further, perusal of the cheque in dispute, it reveals that the complainant's name has been mentioned as the payee and further the complainant has filed this complaint in his individual capacity. In such circumstances production of the power of attorney dated 12.11.2019 will no way affect the defence of the accused.

(viii) The respondent himself has no objection for receiving the reply notice sent by him. Further already xerox copy of the loan document has been produced. While filing the complaint. The respondent has contended that the documents are forged one and created for the purpose of this case and except that he has not made any valid attempt. Further the petitioner is seeking permission to produce the loan document, the reply notice and the power of attorney deed. Further, anyone can set in criminal law motion and since this petition is only to receive additional document this court has not gone into the other aspect with respect of power of attorney deed. Hence, this court is of the considered view that in the interest of justice reasonable opportunity should be given to the petitioner to prove his case hence this petition could be allowed and on marking of the above said documents the respondent has opportunity to cross examine the petitioner on the said document.

In result this petition is allowed.

Typed by me in the laptop and pronounced by me in the open court on this the 12th day of August 2020.

**Sd/- TMT. G .RUBANA., B.Sc., M.L.,
Judicial Magistrate,
Sulur**

Petitioner side witness: - Nil
Petitioner side list of Documents: - Nil
Respondent side witness: - Nil.
Respondent side documents: - Nil.

**Sd/- TMT. G .RUBANA., B.Sc., M.L.,
Judicial Magistrate,
Sulur**