

IN THE COURT OF JUDICIAL MAGISTRATE (FTC) AMBATTUR

**Present: Tmt. A.Theviya B.A.,B.L.,LLM.,
Judicial Magistrate, Fast Track Court
Ambattur**

Dated this the 13 th day of September 2023

(C.N.R. No. TNTR35-001572-2022)

C.M.P. No. 1853/2023 in STC.No.148/2022

M. Praveen

...Petitioner/Accused

//Vs //

M. Chandra

...Respondent/Complainant

This petition came up for final hearing before me in the presence of both side counsels and upon hearing both sides this court inclined to deliver the following:-

ORDER

This petition was filed u/s. 91 Cr.P.C. by the petitioner/accused seeking production of certain account details of the husband of the complainant by the complainant.

1. The Case of the Petitioner/Accused:

The petitioner/accused in his petition contends that it is alleged by the respondent/complainant as if she paid money to the mother of the petitioner/accused out of withdrawal of certain sum from the account of her husband. But to prove the same she has not placed any account details. It is further contended that such document was necessary for the accused to bring out the truth. The document sought by the petitioner/accused is as follows:

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1. Account details of the complainant's husband.

Hence prayed to allow this petition.

2. The counter of the Respondent/Complainant:

Per contra to the same, the respondent/complainant in her counter stated this petition lacks merit since the respondent in her evidence clearly stated as if her husband was died and account passbook of her husband lies with the bank and the account of her husband was closed. It is further contended that it is the petitioner/accused who has to work out his remedy in a manner known to law. Hence prayed to dismiss the petition.

3. Point for Determination:

Whether this petition is to be allowed or not?

4. Answer to the point:

Heard. Records perused. This court has heard rival contentions of both sides and perused the case materials on record. Before venturing into discussion, this court is of the opinion to retrieve the view of the Hon'ble High Court of Madras in In Re Pugazhendi Vs. Dhanasekaran case in CrI.O.P. No.5108/2022 dated 22.07.2022, whereas it is held and retrieved in para No.6 of the order as that; S.91 Cr.P.C. can be invoked either by the court or by the officer in charge of the police station in course of any enquiry or trial when the court has to come to a definite conclusion that those documents which were sought to be produced are necessary for the trial. Further it is also held that mere production of document will not be sufficient to prove its content and hence production of documents u/s.91 Cr.P.C. will not enable the defence to establish their case and therefore such documents must be proved in a manner known to law.

In light of the supra mentioned order of the Hon'ble High Court of madras, this court is of the view that the petitioner has sought certain account details of the husband of the respondent/complainant. The petitioner/accused has sought certain bank details, regarding retirement benefits of the complainant's husband since it is stated in the cross of Pw1 as if she arranged funds to give loan to the accused & his mother out of the retirement benefits of her husband. All those documents were sought by the defence to test the genuineness and source of funds for the complainant to lend money to the accused. Basically in cheque dishonour cases it is a settled principle that until and unless the presumption that lies in favour of the complainant is rebutted by the accused, it is not necessary on the part of the complainant/respondent to prove her source of funds. The burden to raise probability is on the shoulders of the accused/petitioner to rebut the case of the complainant/respondent. Still then, if at all the petitioner/accused wants to establish his case it is always open to him to summon the concerned bank official for want of documents regarding account details of the husband of the respondent/complainant to establish his defence. Without resorting to those way mere filing of this present application u/s.91 Cr.P.C. that too without any substantive reason seems unsustainable. That apart during both stages of questioning u/s.251Cr.P.C. and during questioning U/s. 313(1)(b) Cr.P.C. the accused has not disputed the signature in the cheque. Only during cross of Pw1 a suggestion was placed disputing the signature in the cheque but that seems to be a plausible defence since the petitioner/accused has not taken any steps to prove her defence in a manner known to law.

5. Merely because the respondent/complainant in her cross examination has stated as if she lent money out of the source of her husband's retirement benefits and that by itself does not a ground for the petitioner/accused for seeking production of documents such as account details of the husband of the respondent/complainant u/s.91 Cr.P.C. To which this court is of the view to retrieve the citation held by the

Hon'ble High Court of Madhya Pradesh in MCRC No. 48872/2018 in In Re Raghuvar Dayal Vs. Jujhar Singh dated 03.03.2022 hereunder in connection with S.91 Cr.P.C. application in S.138 N.I act cases. In such order the Hon'ble High Court of Madhya Pradesh has discussed various judgements rendered by the Hon'ble Apex Court and held in Para No.8 of the order as follows:

Para No.8: “ It is not in dispute that the petitioner has not denied his signature on the cheque in question. The most important aspect of the matter as to whether the complainant is under an obligation to produce documents at the behest of the petitioner or not. From the aforesaid enunciation of law laid down by the Hon'ble Apex Court, it is crystal clear that the initial burden is on the complainant to discharge that he had paid the amount to petitioner/accused and it cannot be said that petitioner who is facing trial under S. 138 of NI act is within his right to say that unless and until documents so wanted by him from the respondent/complainant are produced, petitioner/accused would not cross examine respondent/complainant or his witnesses. It is for the respondent to decide that in what way he would like to prosecute his case. Petitioner/accused cannot direct or compel respondent/complainant to either lead the evidence or submit proof as per his own choices or wishes”

6. From the above it is very clear that; it is the petitioner/accused who has to decide in what way he is going to establish his defence and it is not his matter of right to seek production of documents by the complainant/respondent under section 91 Cr.P.C. Also production of documents u/s.91 Cr.P.C. may be relevant in other cases but not in cases filed u/s.138 of N.I act being a special enactment and that is because the presumption that always lies in favour of the complainant and when the complainant proves his initial burden as per S.138 of NI act then it is for the petitioner/accused to raise probability in line with his defence and therefore the complainant is not under an obligation to furnish documents sought u/s.91 Cr.P.C. at

the behest of the petitioner/accused. While so, it is the duty of the defence to establish his case with preponderance of probability. That apart merely producing documents u/s.91 Cr.P.C. does not mean proof of it. The same must be proved in a manner known to law.

7. Hence for reason supra this court is inclined to dismiss this petition and the same would not cause any prejudice to the petitioner/accused since in defence evidence, the petitioner/accused can furnish all the evidence in support of his case and if needed subject to satisfactory reason that is to be accepted by this court, the petitioner/accused is also at liberty during defence evidence to summon the concerned bank official of the husband of the respondent to raise probability over his defence. Hence with such liberty this petition stands dismissed. No Cost.

This order dictated directly to the steno-typist, typed by her and corrected by me and pronounced by me in open court on this the 13th day of September 2023.

(S/d; Tmt. A. Theviya)
Judicial Magistrate,
Fast Track Court,
Ambattur.

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