

**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. 1854/2023 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 attendance particulars of the accused for the year 2021 by the Siva Transport at Bangalore since he is working at the said transport.

**1. The Case of the Petitioner/Accused:**

The petitioner/accused in his petition contends that it is alleged by the respondent/complainant as if the accused issued cheque to the complainant on 23.12.2021 but unfortunately the petitioner/accused was working at the Siva Transport at Bangalore and he was not in station for the said period. It is further contended that such document was necessary for the accused to bring out his defence. The document sought by the petitioner/accused is as follows:

13.09.2023

*A.Theviya (JM) Fast Track Court, Ambattur*

1. Attendance particulars of the accused for the year 2021 from Siva Transport, Bangalore.

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 can very well examine the said Siva Transport as his witness in defence evidence. Without doing so, seeking the aid of this court is unacceptable. 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 attendance details from the Siva Transport at Bangalore to prove the plea of alibi. First of all nowhere in the complaint and in the chief examination of Pw1/respondent it is stated as if the cheque was issued by the accused particularly on 23.12.2021. It is the defence who suggested during cross of Pw1 stating; as if on 23.12.2021 the mother of the petitioner/accused issued cheque of the petitioner to the respondent/complainant? and for which out of answer it is stated by the respondent/complainant as if it is the petitioner who gave his cheque to the respondent/complainant. Nowhere it is specifically stated in cross examination as if the petitioner gave cheque to the respondent on 23.12.2021. Evidence must be read in full to attain sence. That apart it is not necessary that a cheque must be issued to someone in which it is dated. It is at the option of the parties. Moreover if at all the petitioner/accused want to establish his defence then what prevented him to examine the owner of the said Siva Transport as his witness by way of summon? Since he worked under such transport. Mere furnishing document u/s.91 Cr.P.C. by the said transport company does not absolve the accused from his liability since the same must be proved in a manner known to law. 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 transport official as defence witness for want of documents regarding attendance particulars of the accused to establish his defence. Without resorting to those way mere filing of this present application u/s.91 Cr.P.C. for production of document perse 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 suggesstion was placed disputing the signature in the cheque but that seems to be a plausible defecne since the petitioner/accused has not taken any steps to prove her defence in a manner known to law.

5. 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. 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. 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 transport official as defence witness 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 13<sup>th</sup> day of September 2023.

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

***//True Copy//***