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G. Komalan, vs M/S. Adrak Engineering and Construction India (Private) Ltd,

G. Komalan, vs M/S. Adrak Engineering and Construction India (Private) Ltd,

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Court : Kerala Orders

Decided On : Mar-27-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/6423/2023

Appellant : G. Komalan,

Respondent : M/S. Adrak Engineering and Construction India (Private) Ltd,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946 AGAINST THE ORDER DATED 01.08.2023 IN C.M.P.NO.3010 OF 2023 IN CC NO.1782 OF 2021 OF THE SPECIAL COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS FOR THE TRIAL OF CASES U/S.138 OF N.I. ACT, THIRUVANANTHAPURAM PETITIONER/PETITIONER/ACCUSED: G. KOMALAN AGED 57 YEARS, S/O LATE GANGADHARAN, PROPRIETOR HI TECH CONSTRUCTION GROUP, A216, SECOND FLOOR, A WING, CITI TOWER, SECTOR 15, CBD BELAPUR, NAVI MUMBAI, PIN - 400 614 BY ADVS. P.SAMSUDIN MILAN RACHEL MATHEW NASRIN WAHAB

RESPONDENTS/RESPONDENTS/CPMPLAINANT&STATE:

1 M/S. ADRAK ENGINEERING AND CONSTRUCTION INDIA (PRIVATE) LTD, A 1303 PLOT NO. 3, GOKULDHAM HOUSING SECTOR 35 D, KHARGAR, NAVI MUMBAI 410 210 REPRESENTED BY THEIR AUTHORISED OFFICER MR. SANIL THOMAS, S/O THOMAS, AGED 37 YEARS, A/15, KOWDIAR GARDENS, GOLF LINK ROAD, KOWDIAR.P.O. THIRUVANANTHAPURAM, PIN - 695003 2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031 BY ADVS. PHILIP T.VARGHESE THOMAS T.VARGHESE ACHU SUBHA ABRAHAM V.T.LITHA

SRI. M.C. ASHI, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.03.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

----- Crl.M.C.No.6423 of 2023 -----
----- Dated this the 27th day of March, 2024 -----

ORDER

Petitioner challenges the order dated 01.08.2023 in C.M.P.No.3010 of 2023 in C.C.No.1782 of 2021 on the files of the Special Court of Judicial Magistrate of First Class for the Trail of Cases under Section 138 of N.I. Act, Thiruvananthapuram. By the impugned order, petitioners application for production of certain documents mentioned therein has been dismissed.

2. Sri.Samsudin Panolan, the learned counsel for the petitioner

submitted that as many as 10 documents were sought to be produced which were specified in the affidavit as (a) to (j). However, the learned Magistrate without considering the circumstances arising in the instant case, dismissed the application. According to the learned counsel for the petitioner, all the documents

are relevant and are in the possession and custody of the complainant and hence the same are liable to be produced for a proper adjudication.

3. Sri.Philip T.Varghese, the learned counsel for the respondent, on

the other hand submitted that documents that are sought to be produced are either already available in the court records or are not at all relevant and therefore the complainant cannot be compelled to produce the same.

4. The first document that is sought to be produced is the opinion

by a Chartered Accountant. Nothing has been mentioned as to how the said document is relevant. The said document is only an opinion relating to a third party given by a professional and cannot have any relevance in a proceeding between different parties. The said document being not relevant, there is no reason to direct its production.

5. As far as document sought for as (b) and (c) are concerned, the learned counsel for the respondent submitted that they are already produced by the petitioner himself and even marked in trial as Ext.B16 and B17 before the trial court. He further submitted that those two

documents having already been marked, the respondent has on instructions, agreed not to dispute the contents of the said documents. The said submissions obtained after instructions is hereby recorded.

6. As far as Serial No.(d) is concerned, the document sought for is a power of attorney given to a former employee of the petitioner and in page 26 of the deposition of PW1, it is specifically stated that the said document is not available with him. In such circumstances, the said document also cannot be directed to be produced.

7. As far as documents (e), (f), (g) and (h) are concerned, petitioner has not been able to convince this Court as to the relevancy of the same in the instant dispute. The sub contract sought for as Serial No.

(e) is a private arrangement between another person which may contain

various commercial aspects of the respondent and unless the petitioner is able to convince the court, that it is relevant, such third party documents cannot be directed to be produced. This Court is not satisfied as to the relevancy of those documents and hence the request cannot be acceded to.

8. As far as serial No.(j) is concerned, the annual accounts of the

respondent company for the financial year 2016 onwards till 2022, I am of the view that the parties being involved in competing business, such financial details cannot be divulged, unless it is material. The transaction between the parties having arisen in the year 2016, the petitioner has not been able to convince this court as to the relevancy of the said document as well.

In such circumstances, I find no reason to interfere with the impugned. Hence, this Crl.M.C.is dismissed. The trial court shall endeavor to dispose of the case, as expeditiously as possible, at any rate, within a period of two months from today.

Sd/- BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF CRL.MC 6423/2023 PETITIONER'S ANNEXURES : Annexure-A1 TRUE COPY OF THE COMPLAINT IN CC CLASS MAGISTRATE'S COURT FOR NEGOTIABLE DATED 01-12-2018 Annexure-A2 TRUE COPY OF THE DEPOSITION OF PW1 IN CC CLASS MAGISTRATE'S COURT FOR NEGOTIABLE DATED 25-03-2023 Annexure-A3 TRUE COPY OF THE PETITION IN CMP

JUDICIAL FIRST CLASS MAGISTRATE'S COURT FOR NEGOTIABLE INSTRUMENTS ACT CASES THIRUVANANTHAPURAM DATED 04-05-2023 Annexure-A4 TRUE COPY OF THE OBJECTION DATED 31-05- 2023 FILED BY THE COMPLAINANT IN CMP 3010 /2023 IN CC 1782/2021 Annexure-A5 CERTIFIED COPY OF THE ORDER DATED 01-08- 2023 IN CMP 3010/2023 IN CC 1782/2021 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT FOR NEGOTIABLE Annexure-A6 TRUE COPY OF THE DEPOSITION OF DW1 IN CC NO. 1782/2021 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT FOR NEGOTIABLE INSTRUMENTS ACT CASES THIRUVANANTHAPURAM