

Thomas Tharakan Vs. Meenakumari

Thomas Tharakan Vs. Meenakumari

SooperKanoon Citation : sooperkanoon.com/727987

Court : Kerala

Decided On : Jun-28-2005

Reported in : 2005(4)KLT330

Judge : M. Sasidharan Nambiar, J.

Acts : Negotiable Instruments Act - Sections 138; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 91

Appeal No. : Crl.R.P. Nos. 986 and 1205 of 2005

Appellant : Thomas Tharakan

Respondent : Meenakumari

Advocate for Def. : P. Deepthi, Public Prosecutor

Advocate for Pet/Ap. : S. Muhammed Haneef, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. The complainant in C.C. 452/02 and 453/02 is challenging the order of the learned Magistrate directing the petitioner to produce the documents relating to the

chitty transaction under Section 91 of the Code of Criminal Procedure. Petitioner filed the complaint alleging that first respondent committed the offence under Section 138 of Negotiable Instruments Act. Before completing the evidence of the petitioner, first respondent accused filed CMP 11990/04 in C.C. 452/02 to call for certain documents from the custody of the petitioner. Petitioner objected to the production of the documents. As per order dated 17.2.05 the learned Magistrate found that in the nature of the case the documents sought to be produced are desirable for a fair trial and therefore directing the petitioner to produce the records concerning the chitty transaction of the first respondent with the petitioner firm. The prayer to summon the other two sets of the documents were rejected. Petitioner is challenging the order directing the petitioner to produce the documents relating to the chitty transaction contending that at the instance of the accused the learned Magistrate should not have directed the petitioner to produce the documents.

2. Learned Counsel for the petitioner relied on the decision this Court in *Thomas Thomaskutty v. Vijayakumari*, 2002 (1) KLT 689 : 2002 (2) ILR Ker. 150 and argued that an accused is not entitled to call for the records from the complainant and therefore the learned Magistrate should not have allowed the petition.

3. Section 91 of the Code of Criminal Procedure enables the Magistrate whenever the Magistrate considers that the production of the document or other thing is necessary or desirable for the purpose of any trial or other proceeding under this Code by or before such court or officers, such court may issue summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it at the time and place stated in the summons or order. Eventhough the documents were directed to be produced at the instance of the accused, the finding of the learned Magistrate as is clear from the order is that the documents are necessary for a fair trial of the case. In such circumstance, I find no illegality or irregularity in the impugned order passed by the learned Magistrate warranting interference in the exercise of the exceptional revisional power of this Court.

Petitions are dismissed.

