IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

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THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.1773 of 2015
and
M.P.Nos. 1 and 2 of 2015

V.P.Sheeba ...Petitioner

vs.

S.Thirupalu Reddy ...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records, leading to the order of dismissal of Crl.M.P.No.3509 of 2014, in C.C.No.1380 of 2006, dated 11.10.2014, on the file of the FTC No.IV, Metropolitan Magistrate Court, George Town, Chennai, and to set aside the same.

For Petitioner : Mr.K.Sridhar

For Respondent : Mr.D.Sivaram Kumar
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the order, dated 11.10.2014, passed by the learned Metropolitan Magistrate Court, FTC No.IV, George Town, Chennai, in dismissing the Petition in Crl.M.P.No.3509 of 2014, in C.C.No.1380 of 2006.

2. The petitioner is an accused in C.C.No.1380 of 2006. The respondent filed a private complaint against the petitioner for offence under Section 138 of Negotiable Instruments Act, stating that the petitioner borrowed a sum of Rs.6,70,000/- on various dates from the respondent/complainant for the purpose of completing her construction work, and towards the discharge of the said amount, she executed promissory notes for the said amount and also issued three cheques, totaling Rs.6,70,000/-, and when those cheques were presented for realisation, they were dishonoured. Therefore, the complaint has been registered against the petitioner. The respondent examined himself as P.W.1 and admitted in cross-examination that he is an Income Tax Assessee, and he also filed Income Tax Returns, and in the cross-examination, the respondent admitted that in the Income Tax Returns, the amount advanced to the accused/petitioner would not

be reflected. Thereafter, the respondent filed Crl.M.P.No.1401 of 2013 for recalling himself for the purpose of marking Income Tax Returns submitted by him before the Income Tax Authorities and that Petition was allowed, and thereafter, the respondent marked Income Tax Returns, as Ex.P.10. Later, the respondent was also cross-examined by the petitioner. Now, the petitioner has filed Crl.M.P.No.3509 of 2014, under Section 91 of Cr.P.C., before the aforesaid learned Metropolitan Magistrate for issuance of summons to the Income Tax Authorities to produce assessment orders passed by them in respect of the respondent/complainant for the years 2003 to 2006, and that Petition wad dismissed. Aggrieved by the same, the present Criminal Original Petition is filed.

3. Mr.Sridhar, the learned counsel appearing for the petitioner submitted that in the cross-examination, the respondent/complainant admitted the fact that the amount advanced to the petitioner would not be reflected in the Income Tax Returns submitted by him before the Income Tax Authorities, and after marking Ex.P.10, he was able to lead evidence that amounts were advanced to the petitioner during the year 2003 and 2004 and the same was mentioned in the Income Tax Returns, and those Income Tax Returns were not signed by the respondent/complainant and there was no income tax seal affixed on those assessment orders. Therefore, Income Tax Returns-Ex.P.10 filed by the respondent were not true documents and to find out whether Ex.P.10, filed by the respondent before the Income Tax Authorities are true or not, the petitioner filed Crl.M.P.No.3509 of 2014, to summon the Income Tax Authorities to produce the assessment orders passed by them in respect of the assessee/respondent herein and the Lower Court, without appreciating the same, dismissed the Petition.

4. I am unable to accept the contentions of the learned counsel appearing for the petitioner. The Lower Court held in Crl.M.P.No.3509 of 2014 that, while marking Ex.P.10 by the respondent, no suggestion was put by the petitioner/accused that those Income Tax Returns were not genuine. Further, the respondent has admitted in cross-examination that the amounts advanced to the petitioner would not be reflected in Income Tax Returns submitted by him before the Income Tax Authorities, nevertheless, he has produced some Income Tax Returns, wherein, the amounts advanced to the petitioner was mentioned. Therefore, it is open to the petitioner to take advantage of the answer given by the respondent in the cross-examination earlier, and no useful purpose would be achieved by summoning the Income Tax Authorities to produce assessment orders passed in respect of the assessee/respondent for the years 2003-2006, as the petitioner has not challenged the marking of Ex.P.10, while cross-examining the respondent. Hence, I do not find any infirmity in the order passed by the Lower Court.

5. In the result, the Criminal Original Petition is dismissed. Consequently, connected M.Ps are closed.

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-s/d-
Deputy Registrar(J)
Dt:10/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Fast Track Court No.IV,
Metropolitan Magistrate Court,
George Town, Chennai,

2. -do- thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s.K.Sridhar Associates, Advocate SR 4479

gj(co)
prk12/2

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