IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM

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

Crl.O.P.No.17883 of 2010
and
M.P.No.1 of 2010

R.B.Bajaj Kartha
M/s.R.B.Bajaj and Sons (HUF)
rep. by his Power Agent,
Sevak Bajaj. ...Petitioner/Complainant.

vs.

Dinesh Kumar
M/s.Tara Enterprises
No.6, Bommilear Street,
Sowcarpet, Chennai 79. ...Respondent/Accused

Criminal Original Petition is filed to call for records in respect of the order, dated 16.07.2010, made in Crl.M.P.No.548 of 2010, in C.C.No.2444 of 2009, on the file of VIII Metropolitan Magistrate, George Town, Chennai, on the petition filed under Section 91 Cr.P.C., for production of documents, peruse and to set aside the same.

For Petitioner : Mr.R.S.Kirubakaran

For Respondent : No appearance

O R D E R

The complainant in C.C.No.2444 of 2009, on the file of VIII Metropolitan Magistrate, George Town, Chennai is the petitioner herein.

2. The respondent/accused filed a Petition under Section 91 Cr.P.C., seeking for i) production of licence issued under the Money Lenders Act in favour of the petitioner, ii) Statement of accounts for the period from April 2005 to March 2006, iii) Income Tax Returns for the period from April 2005 to March 2006, iv) Proof of HUF and v) Promissory notice for the alleged Rs.35,00,000/-.

3. The learned Magistrate, by order, dated 16.07.2010, allowed the Petition partly, and directed the petitioner herein to produce i) Statement of accounts for the period from April 2005 to March 2006,

ii) Income Tax Returns for the period from April 2005 to March 2006 and iii) Promissory note, alleged to have been executed by the respondent. Aggrieved by the said order, the petitioner/complainant has filed the present Criminal Original Petition.

4. It is submitted by the learned counsel appearing for the petitioner that the respondent admitted the issuance of cheque, and therefore, presumption can be drawn in favour of the petitioner, and, it is for the respondent to rebut presumption, and without adducing any evidence or producing any material, the respondent cannot seek for documents, as mentioned above, from the custody of the petitioner. Hence, the learned counsel submitted that the order passed by the Trial Court in Crl.M.P.No.548 of 2010, is liable to be set aside.

5. I am unable to accept the contentions of the learned counsel appearing for the petitioner. As rightly held by the Trial Court, the amount involved in this case is Rs.35,00,000/-, and according to the petitioner, the respondent borrowed the said sum, executed a promissory note and also issued a cheque, and the liability was denied by the respondent, and to rebut presumption that there was no consideration for the cheque, the respondent has sought for Income Tax Returns and Bank Statements of the petitioner, and in the counter filed in support of Crl.M.P.No.548 of 2010, the petitioner has not denied that he was not an assessee and he was not having any bank account. Hence, the Trial Court rightly allowed the Petition, viz., Crl.M.P.No.548 of 2010, and I do not find any merit in the Criminal Original Petition.

6. In the result, the Criminal Original Petition is dismissed. Consequently, connected M.P. is closed. Considering the fact that the case in C.C.No.2444 of 2009, is pending for the past 5 years, the learned VIII Metropolitan Magistrate, George Town, Chennai, is directed to dispose of the said case within a period of four months from the date of receipt of a copy of this order.

sd

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The VIII Metropolitan Magistrate,
   George Town, Chennai

2. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

+ 1 cc to Mr.R.S.Kirubakaran, Advocate SR 28728

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