IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19071 of 2016

S.Gayathri ... Petitioner/Accused

Vs

P.R.Selvarajulu ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 27.05.2016 passed by the Hon'ble Judicial Magistrate-II, Fast Track Court at Coimbatore in C.M.P.No.1365 of 2016 in C.C.No.303 of 2015 and direct the Respondent / Complainant to produce the document of Pan card Xerox copy and Income Tax Return of 2011 - 2012.

For Petitioner : Mr.P.Balamurugan

O R D E R

This petition has been filed to set aside the order dated 27.05.2016 passed by the Hon'ble Judicial Magistrate-II, Fast Track Court at Coimbatore in C.M.P.No.1365 of 2016 in C.C.No.303 of 2015 and direct the Respondent / Complainant to produce the document of Pan card Xerox copy and Income Tax Return of 2011 - 2012.

2. The petitioner is facing prosecution in C.M.P.No.1365 of 2016 in C.C.No.303 of 2015 before the Judicial Magistrate-II, Fast Track Court at Coimbatore. The complainant was examined as PW1 and the petitioner cross examined the complainant in extenso. Thereafter, the petitioner filed a petition in C.M.P.No. 1365 of 2016 in C.C.No.303 of 2015 under Section 91 Cr.P.C for a direction to the complainant to produce his Income Tax Returns for the year 2011 - 2012, which was dismissed by the Trial Court on 27.05.2016 challenging which the petitioner / accused is before this Court.

3. Learned counsel appearing for the petitioner / accused submitted that the complainant is merely a clerk in the bank and he has no means to give the alleged loan of Rs.18 Lakhs,

which formed the basis for the impugned cheque. On a reading of the impugned order passed by the trail Court, it is stated as follows:-

> "The petitioner in the present application requires the production of the copy of Pan Card and Income tax returns for the period 2011 - 2012. The respondent was examined as PW1 before this Court and he was cross examined. During the cross examination PW1 as admitted in clear terms that he has not disclosed the disputed transaction in his Income Tax returns though he is an Income Tax Assessee. The petitioner having obtained a clear admission in his favour as to the document has now come forward with this application has not offered any satisfactory reason as to how the document is relevant for the further proceeding of the case. Even if the complainant is directed to produce the Income Tax return for the period 2011 - 2012 the same will not help the case of the petitioner or the respondent. The law is also well settled that the existence of legally enforceable debt or liability has to be discharged by the complainant. In such circumstance this Court is of view the requirement of the documents will not be helpfull to the court in deciding the case."

4. From the above, it is clear that the complainant has stated in the witness box that he has not shown the disputed transaction in Income Tax Returns. While so, no purpose will be solved by summoning his Income tax returns. In State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6813], the Supreme Court has clearly stated that Section 91 Cr.P.C. cannot be used for making a fishing enquiry.

5. In the result, the order passed by the Trial Court does not suffer from any infirmity. Accordingly, this petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate - II,
Fast Track Court,
Coimbatore.

+1cc to Mr.P.Balamurugan, Advocate, S.R.No.19081

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SV(CO)
CA(15/09/2016)