IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.9484 of 2016
and
Crl.MP.No.5003 of 2016

P.Velusamy ... Petitioner

Vs

K.V.Raghupathy ...Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order passed on 27.01.2016 in Crl.M.P.No.3434 of 2015 in C.C.No.585 of 2009 on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai as devoid of Merits.

For Petitioner :Mr.Raghupathy
For Respondent :Mr. Rafi

ORDER

This Criminal Original Petition has been filed to set aside the order passed on 27.01.2016 in Crl.M.P.No.3434 of 2015 in C.C.No.585 of 2009 on the file of the learned Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai as devoid of Merits.

2. For the sake of convenience, the parties will be referred to as the Complainant and Accused.

3. It is the case of the complainant that the accused borrowed a sum of Rs.3,00,000/- (Rupees Three lakhs only) from him in July, 2007 and issued a cheque dated 28.08.2008 for Rs.3,00,000/- (Rupees Three Lakhs only), which when presented, was dishonoured. The complainant issued a statutory notice dated 09.09.2008 and after receiving the statutory notice, the accused did not make any payment and hence, he launched a prosecution in C.C.No.585 of 2008 before the Learned Metropolitan Magistrate, Fast Track Court No.1, Egmore.

4. The complainant was cross-examined by the accused and in the cross-examination, the accused has put a specific question to the complainant as to whether the complainant disclosed the loan alleged to have been given to the accused in his Income Tax returns, to which, the complainant has answered that he has not specifically shown the loan amount due from the accused in his income tax returns. Thereafter,

the accused filed an application in Crl.M.P.No.3434 of 2015 in C.C.No.585 of 2009 under Section 91 Cr.P.C calling for the complainant to produce three documents. The trial Court, after hearing the complainant and the accused, has passed the impugned order and directed the complainant to produce the Income Tax returns for the year 2006-2007, challenging which, the complainant is before this Court.

5. Heard Mr.K.Raghupathy, learned counsel appearing for the complainant and Mr.Rafi, learned counsel appearing for the Accused.

6. The learned counsel for the complainant submitted that the complainant has categorically stated that he has not shown the amount, that is due from the accused, specifically in his Income Tax returns, despite which, the trial Court ought not to have directed the complainant to produce the Income Tax returns for the year 2006-2007.

7. Per contra, Mr.Rafi, learned counsel for the accused would submit that in the cross-examination, the complainant has stated that he has shown some amount as loan due from various persons, which includes the amount due from the accused also. He further contended that a burden is cast on the accused under Section 139 of the Negotiable Instruments Act to discharge the same. Under such circumstances, the accused was forced to file an application under Section 91 Cr.P.C.

8. This Court gave its anxious consideration to the rival submissions. The Hon'ble Supreme Court in Debendranath Padi v. State of Orissa reported in (2003) 2 SCC 711, has stated that a petition filed under Section 91 of the Code of Criminal Procedure cannot be used to make a roving enquiry. That apart, this case has been pending from 2009 onwards. Even the petition filed by the accused in Crl.MP.No.3434 of 2015 under Section 91 Cr.P.C does not make out a ground for the trial Court to issue an order as prayed for. According to the complainant, the loan was given in July, 2007 to the accused and the loan amount can utmost be shown in the returns filed for the period 2007-2008, but, whereas, the trial Court has directed the complainant to produce the Income Tax returns of the year 2006-2007.

9. Though Mr.Rafi, learned counsel for the accused submitted that the accused, in his petition, has stated as "2006 & 2007" and not "2006-2007". This Court is not able to decipher either it is a "& "or hyphen, inasmuch as the petition itself has not been typed, but handwritten. In any event, this Court cannot go into this aspect and alter the order that is impugned herein. The order very clearly states that the complainant should produce the Income Tax returns for the year 2006-2007 which in the considered opinion of this Court has no relevance for deciding this case.

In the result, this criminal original petition is allowed and the order dated 27.01.2016 in Crl.M.P.No.3434 of 2015 in C.C.No.585 of 2009 passed by the Learned Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai is hereby set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Metropolitan Magistrate,
 Fast Track Court No.1,
 Egmore, at Allikulam, Chennai.

2.-do- Through The Chief Metropolitan Magistrate,
 Egmore, Chennai.

3.The Public Prosecutor,
 High Court, Chennai.

+1cc to M/s. K. Raghupathy, Advocate, S.R.No.39035

UG(CO)
EU(08/08/2016)

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