IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4215 OF 2016

Lokmangal Constructions Ltd & ors. … Petitioners

vs.

Tarujyot Investments Ltd. & anr. … Respondents

Mr. Vaibhav M. Parshurami i/by Ujwal R. Agandsurve, Advocate for the petitioners.
Mr. Jayant Bardeskar, Advocate for respondent no.1.
Mr. V. V. Gangurde, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.
Date : 30th January, 2017.

P.C. :

1. This petition is directed against the concurrent finding of the Courts below as regards issuance of summons to the Income Tax Officer for production of Income Tax Returns of respondent no.1 for the assessment years 2011-2012 and 2013-2014 in the proceedings filed under Section 138 of Negotiable Instruments Act.

2. The entire evidence in the matter including evidence of the petitioners was completed on 7th June, 2016 and the matter was adjourned to 23rd June, 2016 for the final arguments. On the adjourned date, as the advocate for respondent no.1 was unwell, the trial Court granted further adjournment to 7th July, 2016 on which date the petitioners filed their application at

Ex.104 seeking issuance of witness summons to the Income Tax Officer, Circle 8, Ahmedabad. Since then the trial is pending for final arguments.

3. The petitioners application was rejected by the trial Court on 26th July, 2016. They challenged the order before the Sessions Court vide Criminal Application No.854 of 2016. The Sessions Court dismissed the revision application by it's order dated 27th October, 2016. Thereafter the present petition was filed on 29th November, 2016.

4. Mr. Parshurami, the learned advocate for the petitioners submits that the application had been filed in view of the information received subsequently by the petitioners that the debt in respect of which the cheques were allegedly issued has not been disclosed in the relevant Income Tax returns of respondent no.1. The returns therefore will help the petitioners in establishing that the cheques issued were not towards any legally enforceable debt.

5. Admittedly the petitioners have not laid any foundation for this defence while the evidence was being recorded during trial. In that circumstance the petitioners could not have filed the application at Ex.104. In any case the reflection of the liability in the Income Tax Returns of the respondents would only be one of the circumstances relating to the matter and existence of the liability is not wholly dependent thereon. Hence no interference is called for with the impugned orders. The petition is dismissed.

[Smt. R. P. SondurBaldota, J.]