BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.04.2017
CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.3939 of 2017

Padmanaba Packiaraj : Petitioner/Petitioner/Accused

-vs-

P.Chandrasekaran : Respondent/Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 08.03.2017 made in Crl.M.P.No.1573 of 2017 in C.C.No.575 of 2012 on the file of Judicial Magistrate, (Fast Track Court), Thoothukudi and allow this Criminal Original Petition.

For Petitioner : Mr.J.C.Rathinavelpandian

<u>O R D E R</u>

For the sake of convenience, the parties are referred to as complainant and the accused.

2. The complainant initiated a prosecution in C.C.No.575 of 2012 before the Judicial Magistrate, (Fast Track Court), Thoothukudi against the accused for offence under Section 138 of the Negotiable Instruments Act. After the complainant was examined and cross examined, the accused was questioned under Section 313 Cr.P.C. and the matter was adjourned to several dates for defence evidence. At that juncture, the accused filed Crl.M.P.No.1573/2017 in C.C.No.575 of 2012 under Section 91 Cr.P.C. for a direction to the complainant to produce certain documents, namely, income tax returns of the year 2008-2009, 2009-10 and the statement of accounts submitted by the complainant to the Tahsildar. The complainant filed the counter in Crl.M.P.No.1573/2017. The trial Court partly allowed Crl.M.P.No.1573/2017 in C.C.No.575/2012 by directing the production of the income tax statements for the year 2010-11 to reject the plea of the accused for the production of the statements from the Tahsildar. Challenging the order dated 08.03.2017, passed by the trial Court in Crl.M.P.No.1573/2017, the accused is before this Court.

3. Heard the learned counsel for the accused.

4. The learned counsel for the accused submitted that the complainant is a Pawn Broker and is registered with the Tahsildar. Therefore, it is the duty of the complainant to inform the

Tahsildar about the loan transaction that has been entered into with the accused. That apart, the learned counsel for the accused submitted that the complainant, in the cross examination, had stated that he has no objection for production of the income tax returns. Under such circumstances, the learned counsel for the accused submitted that the trial Court should have allowed the petition filed by the accused in its entirety.

5. This Court gave serious consideration to the submissions made by the learned counsel for the accused.

6. In ***State of Orissa v. Devendranath Pathi*** reported in ***(2004) AIR SCW 6813,*** the Supreme Court has very clearly stated that a petition under Section 91 of the Code of Criminal Procedure cannot be filed for making a fishing or roving enquiry. In this case, during trial, the accused had opportunity to extensively cross examine the complainant and he also had the opportunity to explain the incriminating circumstances under Section 313 of the Code of Criminal Procedure. Thereafter, the request of the accused that his statement of the accounts from the Tahsildar should be summoned is only an attempt to further prolong the trial. The trial Court has considered the plea of the accused that production of income tax return for the year 2010-2011 would be relevant for the just decision of the case and therefore, has directed the production of the same. As regards the statement of accounts submitted to the Tahsildar, it is the case of the complainant that he had given hand loan to the accused. When a pawn broking license is given by the Tahsildar, the licensee is required to only give the statements of accounts relating to pledge of articles and loans giving such articles as statements to the Tahsildar. Hand loans are not covered under the Pawn Broking Rules. Therefore, this Court does not find any infirmity in the order passed by the trial Court warranting interference.

7. In the result, this petition is devoid of merits and accordingly, the same is dismissed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:
The Judicial Magistrate, (Fast Track Court),
Thoothukudi.

+ 1 CC TO Mr.J.C.RATHINAVELPANDIAN, ADVOCATE IN SR No. 50550
SSL

TE/MR/SAR-II : 25/04/2017 : 2P/3C Crl.O.P.(MD)No.3939 of 2017
06.04.2017