BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.2196 of 2013
and
M.P.(MD) Nos.1 and 2 of 2013

R.Dhavamani ... Petitioner

Vs.

T.Dhanapathy ... Respondent

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.2879 of 2012 in C.C.No.207 of 2012 dated 08.01.2013 on the file of the Judicial Magistrate cum Fast Track Court (Magistrate Level) at Kovilpatti by allowing the present petition.

For Petitioner : Mr.D.Selvanayagam
For Respondent : Mr.B.Rajesh Saravanan

O R D E R

The Criminal Original Petition has been filed by the petitioner to set aside the order passed in Crl.M.P.No.2879 of 2012 in C.C.No.207 of 2012 dated 08.01.2013 on the file of the Judicial Magistrate cum Fast Track Court (Magistrate Level) at Kovilpatti.

2.The respondent herein has filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioner / accused. When the case was posted for defence side witnesses, the petitioner had filed an application under Section 254(2) Cr.P.C., for issuance of summons to the Income Tax Officer and the Assistant Commercial Tax Officer, regarding the submission of accounts of the respondent's company. The said petition was dismissed by the lower Court, vide order dated 08.01.2013. As against the same, the present Criminal Original Petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that the petitioner has paid the entire amount to the respondent and the sales tax returns pertaining to the year 2009-2010 has to indicate the transactions of the respondent with the petitioner. Since no documents have been produced by the respondent herein, the truth will not come out without examining the officer concerned. Therefore, the petitioner has filed an application under Section 254 (2) Cr.P.C., seeking to summon the Commercial Tax Officer, for examining him as defence side witness for rebutting the contention of the respondent that there is a legally enforceable debt payable by the petitioner herein. The learned trial Jude without appreciating the merits of the case, dismissed the said application in a mechanical manner and failed to appreciate the settled position of law that the accused should be given an opportunity to rebut the strong presumption against him.

4.The learned counsel for the respondent submitted that the respondent has resisted the claim of the petitioner averred in C.C.No.207 of 2012 stating that in the relevant period, he was not an Income Tax Assessee and he has already produced sale tax return for the year 2009-2010 as demanded by the petitioner on 10.12.2012 and hence, there is no necessity to summon the abovesaid officials.

5.I have heard the learned counsel appearing for the parties and perused the materials available on record.

6.When the respondent has resisted the claim of the petitioner averred in C.C.No.207 of 2012 stating that in the relevant period, he was not an Income Tax Assessee and has already produced sales tax return for the year 2009-2010, there is no necessity to summon the abovesaid officials. Since the respondent has also admitted that he is not an Income Tax Assessee, summoning the income tax officer to give evidence and produce the documents is unnecessary. The respondent has already produced the sales tax return for the year

2009-2010 as demanded by the petitioner under Section 91 Cr.P.C., on 10.12.2012 and the petitioner has no doubt about the genuineness of the same. Furthermore, the case was posted for defence side evidence even on 03.02.2012. The petitioner got several adjournments for production of defence witnesses. Thereafter, he failed to appear before the Court and therefore, NBW came to be issued against him. The petitioner has also not availed the opportunities already granted to him.

7. In view of the above, I do not find any error or infirmity in the order, dated 08.01.2013, passed in Cr.M.P.No.2879 of 2012 in C.C.No.207 of 2012 by the learned Judicial Magistrate, Fast Track Court, Kovilpatti. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Fast Track Court (Magistrate Level),
Kovilpatti.

+1cc to M/S.P.THANGAVEL, Advocate SR.No.93065.
+1cc to M/S.B.RAJESH SARAVANAN, Advocate SR.No.92898.

Crl.O.P.(MD) No.2196 of 2013
and
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