

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 13.08.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20029 of 2018
AND CRL.M.P.No.10678 of 2018

R.Sudharshan

.. Petitioner

Vs

Maheshwaran

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records relating to the order dated 09.07.2018 passed in C.M.P.No.754 of 2018 in C.C.No.154 of 2015 on the file of the Fast Track Magistrate, Coonoor and set aside the same.

For Petitioner : Mr.AR.M.Arunachalam

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 09.07.2018 passed by the learned Fast Track Magistrate, Coonoor in C.M.P.No.754 of 2018 in C.C.No.154 of 2015.

2.Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

3.The petitioner is an accused in C.C.No.154 of 2015 under Section 138 of Negotiable Instruments Act and the same is pending on the file of the Fast Track Magistrate Court, Coonoor. The complainant was examined in-chief and was subjected to examination by the accused. Thereafter, the accused was questioned under 313 of Cr.P.C. At the stage of evidence, the accused filed Crl.M.P.754 of 2018 in C.C.No.154 of 2015 contending that, he will give a list of defence witnesses only if the complainant is directed to give his Income Tax Returns, PAN number and savings bank account numbers. This petition has been dismissed by the trial Court on 09.07.2018, challenging which, the accused is before this Court.

4.Learned counsel for the accused placed strong reliance on the Order dated 30.08.2007 in Crl.R.C.[MD].No.485 of 2007 of Madurai Bench of this Court in S.Ponnuchamy Vs M/s.Sapthagiri Traders, Madurai thro' its Partner K.Balakumar and another Order dated 24.06.2010 in Crl.R.C.No.1016 of 2008 of this Court in A.V.Anbu Chezhan Vs P.Ambikadass.

5.It is true that a fair opportunity should be given to the accused, in order to discharge burden under Section 139 of the Negotiable Instruments Act. However in Debendranath Padi Vs State of Orissa ([2003] 2 SCC 711), the Supreme Court has stated that power under Section 91 Cr.P.C. cannot be invoked for conducting a fishing enquiry. In this case, the complainant has admitted that the amounts borrowed by the accused are not reflected in his bank accounts. In the reply notice dated 30.07.2015, the accused has taken a stand that the said cheques were issued only as security by the brother of the accused. When that being so, the present petition calling for the complainant to furnish the documents set forth there in, are not relevant and germane to decide the facts in issue. Therefore, this Court does not find any infirmity in the order passed by the trial Court warranting interference and this petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gya
To
Fast Track Magistrate,
Connoor.

+1cc to Mr.AR.M.Arunachalam, Advocate SR.NO.55551

sm:29.8.2018

CRL.OP.No.20029 of 2018

सत्यमेव जयते

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